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OF THE
ACADEMY OF POLITICAL SCIENCE
IN THE CITY OF NEW YORK

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EDITED BY
HENRY RAYMOND MUSSEY

THE ACADEMY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY, NEW YORK
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CONTENTS

I. YEARBOOK OF THE ACADEMY

PAGE

| | |
|------------------------------------|------|
| Constitution and By-Laws | 3 |
| Officers of the Academy. | 7 |
| List of Members | 8-48 |

II. EFFICIENT GOVERNMENT

| | | |
|---|---|-----|
| <i>Goodnow, Frank J.</i> | Judicial Interpretation of Constitutional Provisions | 49 |
| <i>Thompson, J. David</i> | The Amendment of the Federal Constitution | 65 |
| <i>Ford, Henry Jones</i> | The Reorganization of State Government | 78 |
| <i>Lewis, William Draper</i> | The Recall of Judicial Decisions | 85 |
| <i>Ashley, Clarence</i> | The Recall of Judicial Decisions | 96 |
| <i>Smith, Munroe</i> | The Development of American Constitutional Law | 100 |
| Discussion | 118-120-121-123 | |
| <i>Henry Rogers Seager, Miles M. Dawson</i> | | |
| <i>Stone, Harlan F.</i> | The Issues Involved in the Methods of Selecting and Removing Judges | 124 |
| <i>Hand, Learned</i> | The Elective and Appointive Methods of Selection of Judges | 130 |
| <i>Roe, Gilbert E.</i> | The Recall of Judges | 141 |
| <i>Dougherty, J. Hampden</i> | Substitutes for the Recall of Judges | 147 |
| Discussion | 157-159-161-163 | |
| <i>Richard S. Childs, Everett P. Wheeler, Charles H. Hartshorne, Edward D. Page</i> | | |
| <i>Cleveland, Frederick A.</i> | The Federal Budget | 165 |
| <i>Willoughby, W. F.</i> | Efficient Organization of the Personnel in Administration | 180 |
| <i>Parkinson, Thomas I.</i> | Legislation Drafting | 190 |
| <i>Reinsch, Paul S.</i> | The Initiative and Referendum | 203 |
| Addresses at the Anniversary Dinner | 210-228 | |
| <i>Albert Bushnell Hart, Edgar T. Brackett</i> | | |
| Statements on the Direct Primaries by: | 229-239 | |
| <i>Job E. Hedges, Oscar S. Straus and William Sulzer</i> | | |
| Report of the Meeting of the Academy of Political Science | 240 | |

III. THE BRYCE MEETING

| | | |
|--|--------------------------------|-----|
| Proceedings of the Meeting of the Board of Trustees in Conferring Honorary Membership upon the Right Honorable James Bryce | | 243 |
| <i>Lindsay, Samuel McCune</i> | Introductory Remarks | 244 |
| <i>Butler, Nicholas Murray</i> | Remarks | 246 |
| <i>Ambassador Bryce</i> | Reply | 248 |

IV. THE CAGED MAN

A SUMMARY OF EXISTING LEGISLATION IN THE UNITED STATES ON THE
TREATMENT OF PRISONERS

BY

E. Stagg Whitin

WHAT IS THE STATUS OF THE PRISONER

The property of the state—The ward of the state 255

WHY IS HE CONFINED

To work off a fine and costs. To satisfy a sentence—Fixed or indeterminate. Awaiting capital punishment. 257

HOW MAY HE BE PUNISHED

Cruel and unusual punishments—Punishment exceeding hard labor—Solitary confinement—Dungeons—Blood hounds—Shackles and chains—Reduction of food—The gag, iron mask, etc.—Corporal punishment—Showering with cold water—Stocks—Crucifix, yoke, buck, etc. Punishment injurious to mind or body—Greater or more severe punishment than prescribed by board. 269

HOW CAN HE BE WORKED

Leased to individuals for work outside the institution—Leased to individuals for work inside the institution—The state may work him—State industries for state consumption—Farms for state consumption—Public works—State farms for community consumption—State factories for community consumption—Under specific limitations—Competition with free labor—Number of convicts in one industry—Use of machinery—Manufacture of goods manufactured by free industries—Branding of prison-made goods—Manufacture of certain articles—Work injurious to health or dangerous to person of convict—Association with free laborers during work hours—Labor which can be carried on without expense to the county and is consistent with safe-keeping of prisoners. Hours of labor. 276

HOW IS HE MAINTAINED

Bunking—Food—Clothing 299

HOW IS HE CARED FOR

Health provisions—Religious provisions—Educational provisions—Moral education—Reduction of time for good conduct—Special indulgences for good conduct—Reporting of good conduct to board—Merit marks—Grading of prisoners—Wage reward—General education—Prison schools—Prison libraries—Industrial education 311

WHO CAN SET HIM FREE

Parole—Pardon—The Governor—The Governor and Board of Pardons—Governor and Council—Governor and Senate—Legislature 344

WHAT SPECIFIC DISABILITIES ARE CAUSED BY A PRISON SENTENCE

Loss of citizenship—Change in marital relationship—Loss of power of procreation (vasectomy)—A criminal record—Use of dead body for scientific purposes 353

CONSTITUTION AND BY-LAWS

CONSTITUTION

ARTICLE I—*Name*

The name of this association shall be "The Academy of Political Science in the City of New York."

ARTICLE II—*Objects*

The objects of the Academy are the cultivation of the political sciences and their application to the solution of social and political problems. These objects shall be prosecuted in such manner as the Board of Trustees shall from time to time direct, either by the encouragement of research, the holding of public meetings or lecture courses, the establishment of a library, or in any other way the Board may approve.

ARTICLE III—*Headquarters*

The headquarters of the Academy shall be in the City of New York, and the Academy shall be affiliated with Columbia University in such manner as the Board of Trustees may be able to arrange with the Trustees of Columbia University.

ARTICLE IV—*Membership and Dues*

The Board of Trustees shall prescribe the qualifications of members, and establish such classes of membership, whether life, active, associate or otherwise, as it may deem wise, define the privileges of members and fix the amount of the annual dues or life-membership fees to be paid by the members.

ARTICLE V—*Government*

The management of all the affairs of the Academy and the trusteeship of all its property are vested in a Board of Trustees composed of nine directors elected by the members of the Academy, and the officers elected by the Board of Directors. Three directors shall be chosen at the annual meeting each year for a term of three years each.

At the annual meeting at which this constitution is adopted nine directors shall be elected, and those persons so chosen shall at their first meeting, to be called within one week from the date of the annual meeting by the secretary of that meeting, cast lots so that the terms of service of three directors shall expire at the next annual meeting, three at the second, and three at the third annual meeting from the one at which the nine directors were chosen.

The directors and the officers together constitute the Board of Trustees and any five of them shall constitute a quorum. The Board shall meet at the call of the President of the Academy, who shall be *ex officio* the Chairman of the Board. At any time at the written request of three members of the Board the President shall call a meeting.

In the event of the death or resignation of a director, the Board shall fill the vacancy until the next annual business meeting of the members when the members shall elect a person to fill the unexpired term.

ARTICLE VI—*Officers*

The officers of the Academy shall be a President, two Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually by the directors at the first meeting of the Board subsequent to the annual business meeting of the Academy. They shall be elected for a term of one year and shall serve until their successors are chosen and shall perform the duties usually pertaining to their respective offices and such as may be prescribed by the Board of Trustees.

ARTICLE VII—*Meetings*

The meetings of the Academy shall be held at such times and places and for such purposes as the Board of Trustees may direct, except that at least once a year in the month of December or January the Board shall fix a date for the annual business meeting for the election of directors and the presentation of reports on the work of the Academy from its officers or from the Board of Trustees, or both, and notice of such meeting shall be mailed to all members at least ten days prior to the date so fixed. Such members as are present shall constitute a quorum.

ARTICLE VIII—*Advisory Council*

The Board of Trustees may elect an Advisory Council to be composed of men distinguished for public service, whether members of the Academy or not, provided they are interested in its work and willing to give counsel in the formulation and execution of its policies.

ARTICLE IX—*By-Laws and Amendments*

The Board of Trustees shall have power to adopt by-laws not inconsistent with this constitution for the better transaction of its business, and amend the same at pleasure and this constitution may be amended by a majority vote at any annual business meeting or at any regularly called special business meeting of the members of the Academy provided notice of such meeting has been mailed to all members at least ten days prior to the date of meeting, and provided further, that all amendments shall have the approval of a majority of the Board of Trustees, or otherwise must be considered at two consecutive business meetings of the members of the Academy before they can be put to vote.

BY-LAWS

1. The Board of Trustees shall meet at the call of the President, and five members shall constitute a quorum. On written request of three members of the Board the President shall call a meeting of the Board.

2. Any person interested in the work of the Academy and signifying a desire to promote its objects shall, upon application to the Secretary and upon payment of dues for the ensuing year, be enrolled as a member.

3. Members of the Academy shall pay annual dues in the amount of five dollars, payable in advance. Said payment shall date from the first day of the quarter (January—March, April—June, July—September, October—December) in which such members were enrolled, except that the membership of persons enrolled in March, June, September and December shall date for the payment of dues from the first day of the following month.

4. Any member may compound his annual dues by the single payment of one hundred dollars and thereby be enrolled as a Life Member and be exempt from further payment of annual dues.

5. The President shall have executive control of the business offices of the Academy. He shall appoint an "Assistant to the President" subject to the approval of the Board and at a salary to be fixed by the Board, and shall prescribe the duties of that officer.

6. The President shall approve all bills incurred for the Academy and transmit them for payment to the office of the Treasurer, together with a copy of, or reference to, the resolution of the Board under which the expense was incurred, except that incidental office expenses in an amount not to exceed one hundred dollars (\$100) a month, and bills for temporary service in the offices of the Academy, or for purposes (services, material, traveling expenses, *etc.*) connected with the regular routine business of the Academy, or the work of any of its committees, in amounts not exceeding one hundred dollars (\$100) may be paid by the Treasurer upon the approval of the President without special resolution of the Board, provided, however, all such payments be reported to and approved by the Board at its next meeting.

7. These by-laws may be amended at any meeting of the Board of Trustees by a majority vote, provided at least eight members of the Board vote in favor of such amendment or subsequently record in writing their consent thereto.

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Professor of Social Legislation, Columbia University

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MUNROE SMITH

EDITOR PROCEEDINGS OF THE ACADEMY
HENRY RAYMOND MUSSEY

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 Buckley, William W. 141 Broadway
 Buckner, M. N. 26 Broad Street
 Budington, Ernest G. 32 Nassau Street
 Buhler, Conrad 453 Broome Street
 Bullock, Charles E. Canton, Pa.
 Bullock, George 40 Wall Street
 Bullowa, F. E. M. 32 Nassau Street
 Bunker, Albert 97 Hudson Terrace, Yonkers, N. Y.
 Burden, James A. Troy, N. Y.
 Burdick, F. M. Columbia University
 Burdick, William 602 Continental Building, Baltimore, Md.
 Burges, William H. 2 Republic Building, El Paso, Texas
 Burgess, John W. 323 West 57th Street
 Burke, Charles E. 40 Pollock Avenue, Pittsfield, Mass.
 Burke, Thomas 408 Burke Building, Seattle, Wash.
 Burns, Edward 904 President Street, Brooklyn, N. Y.
 Burns, William J. 811 First National Bank Building, Chicago, Ill.
 Burr, A. G. Rugby, N. D.
 Burr, Mrs. Winthrop 7 Wall Street
 Burrows, William H. P. O. Box 1022, Middletown, Conn.
 Burt, Silas W. 216 West 100th Street
 Busch, Adolphus St. Louis, Mo.
 Bush, Irving T. 100 Broad Street
 Bustamante, Antonio S. de Apartado 134, Havana, Cuba
 Butler, Charles Stewart 32 Nassau Street
 Butler, Joseph G., jr. Youngstown, O.
 Butler, Nicholas Murray 119 East 30th Street
 Butler, William W. S. Stockton, Calif.
 Byrne, James 24 Broad Street
 Cabot, Mrs. Francis H. 37 East 75th Street
 Cadwalader, John L. 40 Wall Street
 Cahn, Arthur L. 27 Pine Street
 Cahn, William L. 111 Broadway
 Calder, John 129 Ferry Avenue, East, Detroit, Mich.
 Caldwell, James H. Care of Troy Trust Co., Troy, N. Y.
 Caldwell, R. J. 55 Walnut Street, Montclair, N. J.
 Calhoun, Patrick 30 Broad Street
 Calkins, Earnest Elmo 250 Fifth Avenue
 Calkins, John U. 2347 Prospect Street, Berkeley, Calif.
 Cammann, Hermann H. 84 William Street
 Canfield, George F. 49 Wall Street
 Cannon, James G. Fourth National Bank
 Carey, Mrs. Francis Kiney 509 Cathedral Street, Baltimore, Md.

- Carlebach, Walter M. 136 West 86th Street
 Carlton, Newcomb 131 East 66th Street
 Carnegie, Andrew 2 East 91st Street
 Carnochan, William E. 52 William Street
 Carpenter, Herbert S. 71 Broadway
 Carrington, A. B. 200 Broadway
 Carstens, C. C. 43 Mt. Vernon Street, Boston, Mass.
 Carstenson, John 526 Grand Central Terminal
 Carter, Jarvis P. 52 William Street
 Carvalho, S. S. Metuchen, N. J.
 Casady, Simon Central State Bank, Des Moines, Ia.
 Chadbourne, Thomas L., jr. 14 Wall Street
 Chamberlain, Joseph P. Kent Hall, Columbia University
 Chandler, Percy M. 3d & Walnut Streets, Philadelphia, Pa.
 Channing, J. Parke 5 Broadway
 Chapman, James M. 80 William Street
 Chase, George 309 West 74th Street
 Cheney, O. H. 78 Madison Avenue
 Chesebrough, Robert A. 17 State Street
 Chew, Ng Poon 809 Sacramento Street, San Francisco, Calif.
 Childs, Edwards H. 59 Wall Street
 Childs, R. S. 23 Fifth Avenue
 Childs, William, jr. 200 Fifth Avenue
 Childs, William H. 17 Battery Place
 Choate, Joseph H. 60 Wall Street
 Church, William C. 20 Upper Montclair Avenue, Montclair, N. J.
 Cillis, Hubert 20 Nassau Street
 Clafin, John 224 Church Street
 Clancy, John R. 1010 West Belden Avenue, Syracuse, N. Y.
 Clare, William F. Suite 916, 135 Broadway
 Clark, David T. Williamstown, Mass.
 Clark, Emory W. 1740 Jefferson Avenue, Detroit, Mich.
 Clark, John Bates 407 West 117th Street
 Clark, J. M. Amherst, Mass.
 Clark, LeRoy , 114 Liberty Street
 Clark, Russell Porter 52 Grove Street, Stamford, Conn.
 Clark, Thomas F. 195 Broadway
 Clark, V. V. 444 Henry Building, Seattle, Wash.
 Clark, Walter E. 824 St. Nicholas Avenue
 Clark, William Andrews 20 Exchange Place
 Clark, W. R. 2717 North Broadway, Los Angeles, Calif.
 Clarke, E. A. S. 2 Rector Street
 Clarke, Frederick H. 32 Nassau Street
 Clarke, Howard 2 West 45th Street
 Clarke, Lewis L. 128 Broadway
 Clarke, Samuel B. 32 Nassau Street
 Clarkson, David A. Merrick, L. I.
 Clement, S. M. 737 Delaware Avenue, Buffalo, N. Y.
 Cleveland, F. A. White House, Washington, D. C.

| | |
|--------------------------|---|
| Cleveland, J. Wray | 176 Broadway |
| Clews, Henry | 15 Broad Street |
| Close, F. K. B. | 7 Wall Street |
| Cochran, William F. | Woodbrook, Md. |
| Coffin, C. A. | 30 Church Street |
| Coffin, W. E. | 902 Seventh Street, Des Moines, Ia. |
| Cogswell, Mrs. Laura E. | 250 West 84th Street |
| Cogswell, Ledyard | 318 State Street, Albany, N. Y. |
| Cogswell, William Browne | Syracuse, N. Y. |
| Cohen, Benno | 308 West 94th Street |
| Cohen, Julius Henry | 15 William Street |
| Cohen, William N. | 22 William Street |
| Colby, Howard A. | Plainfield, N. J. |
| Cole, Charles L. | 49 Wall Street |
| Cole, Edward F. | Times Building, Broadway & 42d Street |
| Coleman, C. P. | 57th Street and Broadway |
| Coler, Bird S. | 43 Cedar Street |
| Colgate, Gilbert | 306 West 76th Street |
| Collier, Barron G. | Flat Iron Building, Broadway & 23d Street |
| Colvin, D. Leigh | 655 West 177th Street |
| Conant, Charles A. | 34 Nassau Street |
| Conkey, H. M. | 83 Cedar Street |
| Conklin, Roland R. | 1 Wall Street |
| Connor, H. G. | Bruton & Gray Streets, Wilson, N. C. |
| Connor, Washington E. | 31 Nassau Street |
| Conway, Eustace | 127 East 35th Street |
| Conyngton, Thomas | 20 Vesey Street |
| Cook, Mrs. Madge Carr | 302 West 77th Street |
| Cook, Walter W. | University of Chicago Law School, Chicago, Ill. |
| Cook, William W. | 44 Wall Street |
| Copeland, Charles C. | Red Bank, N. J. |
| Cord, J. F. | Carlotte Hall, Md. |
| Cordley, F. R. | 324 West 103d Street |
| Cornell, William H. | 34 Nassau Street |
| Corning, C. R. | 36 Wall Street |
| Corrigan, Andrew | 140 Kansas Street, San Francisco, Calif. |
| Corrigan, J. E. | 52 West 9th Street |
| Corwin, Edward S. | 115 Prospect Avenue, Princeton, N. J. |
| Coshow, O. P. | Roseburg, Ore. |
| Coster, Miss Helen | 37 East 37th Street |
| Cotton, Joseph P., jr. | 165 Broadway |
| Couden, Elliott R. | Ridgewood National Bank, Brooklyn, N. Y. |
| Coulter, Elmer Dean | 261 West 44th Street |
| Cowperthwait, J. Howard | 2222 Third Avenue |
| Cox, Jennings S. | 319 West 80th Street |
| Cox, Robert Lynn | 1 Madison Avenue |
| Coykendall, S. D. | Rondout, N. Y. |
| Crain, Thomas C. T. | 121 West 75th Street |
| Cram, Ralph Adams | 15 Beacon Street, Boston, Mass. |

| | |
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| Crane, Alexander B. | 55 Wall Street |
| Crane, Charles R. | 31 West 12th Street |
| Cravath, Paul D. | 52 William Street |
| Craven, W. R. | 108 South Main Street, Dayton, O. |
| Crawford, Miss Caroline | Middlebury College, Middlebury, Vt. |
| Crawford, Hanford | Care of Boatmen's Bank, St. Louis, Mo. |
| Crawford, W. | 10 West 20th Street |
| Creel, Enrique C. | 3a de Londres, No. 40, Mexico City, Mex. |
| Crider, George A. | Dickinson College, Carlisle, Pa. |
| Croll-Blackburne, Mrs. Ida P. | 519 South 41st St., West Phila., Pa. |
| Croly, Herbert, | Windsor, Vt. |
| Crook, J. W. | Amherst, Mass. |
| Crow, Allen B. | 604 West 114th Street |
| Crowell, John Franklin | 17 West 91st Street |
| Crumplin, Cecil D. | 167 Beech Street, Arlington, N. J. |
| Culbertson, John J. | Paris, Texas |
| Cummins, Albert B. | United States Senate, Washington, D. C. |
| Curtis, Bracey | Nogales, Ariz. |
| Curtis, W. E. | 30 Broad Street |
| Curtiss, Frederic H. | 63 Bay State Road, Boston, Mass. |
| Cutcheon, F. W. M. | 24 Broad Street |
| Cutler, James G. | Cutler Building, Rochester, N. Y. |
| Cutting, Churchill H. | 37 Madison Avenue |
| Cutting, Elizabeth B. | 37 Madison Avenue |
| Cutting, R. Bayard | 32 Nassau Street |
| Cutting, R. Fulton | 32 Nassau Street |
| Dailey, John E. | 35 Wall Street |
| Dakin, Arthur H. | Amherst, Mass. |
| Dashew, Leon D. | 80 St. Nicholas Avenue |
| Davey, W. N. | 584 Central Avenue, East Orange, N. J. |
| Davis, Andrew McF. | 10 Appleton Street, Cambridge, Mass. |
| Davis, Daniel A. | 52 West 57th Street |
| Davis, David T., | 55 Liberty Street |
| Davis, Frank M. | 145 West 58th Street |
| Davis, G. Richard | 135 Broadway |
| Davis, Harrison M. | 75 Ames Building, Boston, Mass. |
| Davis, J. Lionberger | Third National Bank Building, St. Louis, Mo. |
| Davis, John A. | 37 Fifth Avenue |
| Davis, Pierpont V. | 851 N. Broad Street, Elizabeth, N. J. |
| Davis, Robert E. | Gainesville, Fla. |
| Davis, Vernon M. | 194 Lenox Avenue |
| Davison, H. P. | 23 Wall Street |
| Dawson, Edgar | Normal College |
| Dawson, Miles M. | 141 Broadway |
| Dealey, James Quayle | Brown University, Providence, R. I. |
| Debevoise, Thomas M. | 62 Cedar Street |
| DeBoer, Joseph Arend | Montpelier, Vt. |
| Decker, Mrs. J. W. | 51 West 54th Street |
| Decker, Martin S. | Public Service Commission, Albany, N. Y. |

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| Deemer, Horace E. | Red Oak, Ia. |
| de Forest, H. W. | 30 Broad Street |
| de Forest, Robert W. | 7 Washington Square |
| DeKay, John W. | 111 Broadway |
| Delano, S. S. | 165 Broadway |
| Delano, William Adams | 4 East 39th Street |
| Delmar, Eugene | 311 West 70th Street |
| Deming, Horace E. | 15 William Street |
| Demorest, William C. | 60 Liberty Street |
| Denison, John D., jr. | Bradley Building, Dubuque, Iowa |
| Denison, Winifred T. | Department of Justice, Washington, D. C. |
| Dennis, Alfred L. P. | 518 Wisconsin Avenue, Madison, Wis. |
| Dennis, James S. | Box 175, Montclair, N. J. |
| Dennis, John B. | P. O. Box 1792 |
| Depew, Chauncey M. | 27 West 54th Street |
| Derby, James Lloyd | 925 Park Avenue |
| de Roode, Albert | 52 Wall Street |
| Derrick, Calvin | Freeville, N. Y. |
| DeSanno, A. P. | 1232 Race Street, Philadelphia, Pa. |
| Devine, Edward T. | 607 Kent Hall, Amsterdam Ave. & 116th Street |
| Dey, Donald | 201 DeWitt Street, Syracuse, N. Y. |
| Dick, J. Henry | 20 East 53d Street |
| Dickinson, A. Lowes | 52 William Street |
| Diefenthaler, Charles E. | 190 Franklin Street |
| Dillon, John F. | 195 Broadway |
| Dimock, George E. | 907 North Broad Street, Elizabeth, N. J. |
| Dimse, Henry | 874 Broadway |
| Dittenhoefer, Miss Estelle | 17 East 83d Street |
| Dodd, Allison | 307 Belleville Avenue, Bloomfield, N. J. |
| Dodd, W. F. | University of Illinois, Urbana, Ill. |
| Dodge, Cleveland H. | 99 John Street |
| Dodge, Miss Grace H. | 262 Madison Avenue |
| Doherty, Henry L. | 60 Wall Street |
| Dommerich, L. W. | 314 West 75th Street |
| Donald, James M. | 9 Nassau Street |
| Donovan, H. W. | 7 Wall Street |
| Doremus, R. P. | 42 Broadway |
| Dorr, Goldthwaite, H. | 521 West 111th Street |
| Doty, Mrs. Alvah H. | 120 West 57th Street |
| Dougherty, J. Hampden | 27 William Street |
| Douglas, James | 99 John Street |
| Douglas, Walter | Bisbee, Ariz. |
| Dow, Miss Caroline B. | 3 Gramercy Park |
| Dowling, Victor J. | 27 Madison Avenue |
| Draper, George Otis | 1 Madison Avenue |
| Draper, Mrs. William P. | Hotel Gotham, Fifth Avenue & 55th Street |
| Drayton, J. Coleman | 829 Park Avenue |
| Dreicer, Mrs. Michael | 1046 Fifth Avenue |
| Dreier, Miss Mary E. | 6 Montague Terrace, Brooklyn, N. Y. |

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|-------------------------|--|
| Dresser, Gardiner S. | 71 Broadway |
| Drury, Frank A. | Merchants National Bank, Worcester, Mass. |
| DuBois, Charles G. | 15 Dey Street |
| Duggan, Stephen Pierce | College of the City of New York |
| Dulaney, Henry S. | 517 W. Lombard Street, Baltimore, Md. |
| Dulles, William | 220 Fifth Avenue |
| Dummer, Mrs. W. F. | 679 Lincoln Parkway, Chicago, Ill. |
| Duncan, R. D. | Care of State Trust Company, Little Rock, Ark. |
| Dunham, Carroll | Irvington-on-Hudson, N. Y. |
| Dunham, Edward K.* | 35 West 68th Street |
| Dunn, Henry E. | 53 East 79th Street |
| Dunning, William | Columbia University |
| Dunstan, J. S. | 42 Broadway |
| Dupuis, Charles W. | Western German Bank, Cincinnati, O. |
| Durham, Knowlton | 1 Gramercy Park |
| Duval, H. Rieman | 32 Nassau Street |
| Dwight, John E. | 33 Mount Morris Park West |
| Earle, J. Walter | 293 Broadway |
| Earp, Edwin L. | Drew Forest, Madison, N. J. |
| Easley, Ralph M. | 1 Madison Avenue |
| Eastman, George | 350 East Avenue, Rochester, N. Y. |
| Eastman, Joseph | 71 Broadway |
| Eastman, Lucius R., jr. | 375 Washington Street |
| Eastman, Samuel C. | Concord, N. H. |
| Easton, Robert T. B. | 29 Broadway |
| Eaton, Arthur W. | Pittsfield, Mass. |
| Eaton, Frederick H. | 165 Broadway |
| Eddy, Charles B. | 62 Cedar Street |
| Eder, James M. | 251 West 95th Street |
| Edison, Thomas A. | Orange, N. J. |
| Edmonds, Dean S. | 166 West 72d Street |
| Edmonds, Franklin S. | 7818 Lincoln Drive, Philadelphia, Pa. |
| Edwards, Daniel M. | 208 Salina Street, Syracuse, N. Y. |
| Edwards, Stephen O. | 170 Westminster Street, Providence, R. I. |
| Egleston, Melville | 26 Cortlandt Street |
| Ehrich, Samuel W. | 25 Broad Street |
| Eickhoff, Henry | 604 Mills Building, San Francisco, Calif. |
| Eidlitz, Ernest F. | 31 Nassau Street |
| Eidlitz, Otto M. | 489 Fifth Avenue |
| Eisman, Max | 1 West 70th Street |
| Eldridge, Frederick L. | 580 Fifth Avenue |
| Eldridge, S. | 244 East 105th Street |
| Elkus, Abram I. | 170 Broadway |
| Elliott, L. L. | 311 West Third Street, Los Angeles, Calif. |
| Ellis, George W. | 149 Broadway |
| Ellis, Ralph | 22 West 57th Street |
| Ellsworth, William W. | 33 East 17th Street |
| Ely, Robert E. | 23 West 44th Street |
| Emery, Thomas | Grand Central Station |

- Erb, Newman 42 Broadway
 Erbsloh, R. 564 Broadway
 Erdmann, Albert J. 30 Broad Street
 Essing, Arthur 44 West 91st Street
 Estabrook, A. F. 15 State Street, Boston, Mass.
 Estabrook, H. D. 115 Broadway
 Evans, Nelson W. Portsmouth, O.
 Evans, Rowland 221 Federal Building, Indianapolis, Ind.
 Ewing, Thomas, jr. 67 Wall Street
 Eyer, George A. 37 Wall Street
 Fairbanks, Charles W. Indianapolis, Ind.
 Fairchild, Charles S. 35 Fifth Avenue
 Fairchild, Samuel W. P. O. Box 1120
 Fairlie, John A. 1004 South Lincoln Avenue, Urbana, Ill.
 Fallows, Edward H. 30 Church Street
 Fancher, B. H. 530 Fifth Avenue
 Farley, Terence Hall of Records
 Farnsworth, Fred. E. 11 Pine Street
 Farquhar, A. B. York, Pa.
 Farrel, Mrs. John Truitt 47 Elm Street, Morristown, N. J.
 Farrell, James A. 71 Broadway
 Farrelly, Stephen 182 West 58th Street
 Fay, Charles R. 119 Montague Street, Brooklyn
 Fenwick, Charles G. 2 Jackson Place, Washington, D. C.
 Ferguson, Mrs. F. Box 71, Halesite, Suffolk County, N. Y.
 Ferguson, Henry 123 Vernon Street, Hartford, Conn.
 Ferris, Frank A. 262 Mott Street
 Field, E. B. P. O. Drawer 1708, Denver, Colo.
 Fieldman, Sol 514 West 114th Street
 Finley, John H. College of the City of New York
 Findley, William L. 125 Riverside Drive
 Fischer, W. J. National Bank of Commerce Building, St. Louis, Mo.
 Fish, Frederick P. 84 State Street, Boston, Mass.
 Fish, Mrs. John C. 19 South Broadway, Shelby, O.
 Fisher, Frederick A. 71 Central Street, Lowell, Mass.
 Fisher, Mrs. Harriet White 125 East Hanover Street, Trenton, N. J.
 Fisher, Irving 460 Prospect Street, New Haven, Conn.
 Fisher, Irving R. 67 West 50th Street
 Fisk, Everett C. 2a Park Street, Boston, Mass.
 Fisk, Pliny 62 Cedar Street
 Fiske, Amos K. 7 West 43d Street
 Fiske, Haley 1 Madison Avenue
 Fitzpatrick, Miss Mary Coghlan 885 Kent Avenue, Brooklyn, N. Y.
 Fitzwilson, W. G. 11 Pine Street
 Flagler, J. H. 200 Broadway
 Fleming, Henry S. 1 Broadway
 Fleitmann, Frederick T. 490 Broome Street
 Fletcher, Austin B. 165 Broadway
 Flexner, Bernard Paul Jones Building, Louisville, Ky.

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|--------------------------------|---|
| Flinn, Rev. Victor G. | 39 East 42d Street |
| Flint, Charles R. | 4 East 36th Street |
| Floyd, Mrs. Nelson | Syosset, L. I. |
| Follett, A. D. | St. Clair Building, Marietta, O. |
| Folsom, Henry T. | Llewellyn Park, Orange, N. J. |
| Foote, Allen R. | 334 Chamber of Commerce Building, Columbus, O. |
| Forbes, Allen B. | 56 William Street |
| Fordham, H. L. | 111 Broadway |
| Fordyce, S. W. | 703 Commonwealth Trust Building, St. Louis, Mo. |
| Forster, William | 59 Wall Street |
| Forsyth, Ralph K. | 41 Pearl Street, Kingston, N. Y. |
| Fort, John Franklin | Essex Building, Newark, N. J. |
| Fosdick, Raymond B. | 854 West 181st Street |
| Fowler, Mrs. Anderson | 60 East 68th Street |
| Fowler, Carl H. | 55 Liberty Street |
| Fox, Alan | 50 Pine Street |
| Fox, Hugh F. | 109 East 15th Street |
| Fox, William H. | Taunton, Mass. |
| Fraenkel, Osmond K. | Lawrence Avenue, Lawrence, L. I. |
| Frame, Andrew J. | 303 Grand Avenue, Waukesha, Wis. |
| Frankfort, M. | 15 East 48th Street |
| Frankfurter, Felix | Bureau of Insular Affairs, Washington, D. C. |
| Frankland, Frederick William * | "Okataina," Foxton, Manawatu, New Zealand |
| Franklin, Fabian | 527 West 110th Street |
| Franklin, George S. | 33 East 38th Street |
| Franklin, Thomas H. | San Antonio, Texas |
| Franks, Robert A. | Home Trust Co., Hoboken, N. J. |
| Frantz, J. F. | 25 Maple Avenue, New Rochelle, N. Y. |
| Fraser, George C. | 20 Exchange Place |
| Freiberg, Maurice J. | 3576 Alaska Avenue, Cincinnati, O. |
| Frelinghuysen, G. G. | 32 Liberty Street |
| French, John | 59 Wall Street |
| French, Nathaniel | Davenport, Ia. |
| Freund, Sanford E. H. | 115 Broadway |
| Frew, Walter E. | 13 William Street |
| Frick, Henry C. | 640 Fifth Avenue |
| Friedman, H. G. | 66 West 94th Street |
| Fries, F. H. | Winston-Salem, N. C. |
| Frissell, A. S. | 530 Fifth Avenue |
| Froment, Frank L. | 52 East 74th Street |
| Frothingham, John W. | 14 Wall Street |
| Frueauff, Charles A. | 60 Wall Street |
| Fuller, Paul | 2 Rector Street |
| Furnya, M. | 216 Second Ave., S., Seattle, Wash. |
| Gaillard, William D. | 42 Broadway |
| Gallaher, E. Y. | 814 West End Avenue |
| Gallatin, Albert | 7 East 76th Street |
| Gallatin, Francis D. | 119 East 38th Street |

- Gammell, William
 Gans, Mrs. Howard S.
 Garanfio, W. H.
 Gardiner, Robert H.
 Gardner, Henry B.
 Gardner, Rathbone
 Garfield, H. A.
 Garrett, Robert
 Garst, Julius
 Garvan, Francis P.
 Gavegan, Edward J.
 Gavegan, Mrs. Edward J.
 Geer, George J.
 Geeting, John F.
 Gellatly, William
 Gerard, James W.
 Gettell, Raymond G.
 Giberga, Eliseo
 Gibson, H. W.
 Gifford, James M.
 Gilbert, Alexander
 Gilbreth, Frank B.
 Gildersleeve, Henry A.
 Gildersleeve, Louis
 Gildersleeve, Ferdinand
 Gillespie, Robert McM.
 Gillette, King C.
 Gillies, Edwin J.
 Gillin, John Lewis
 Gilluby, George K.
 Gilpin, William Jay
 Giltner, E. E.
 Girelius, Charles G.
 Glasson, William H.
 Gleason, Carlisle J.
 Glenn, John M.
 Goan, Mrs. Orrin S.
 Goetze, Frederick A.
 Golding, John N.
 Goldman, Henry
 Goldzier, Morris
 Gompers, Samuel
 Gonzalez, Antonio C.
 Gonzales, Teodosio
 Goodhart, Mrs. Albert E.
 Goodhart, Philip J.
 Goodnow, F. J.
 Gordon, Armistead C.
 Gordon, F. E.
- 50 South Main Street, Providence, R. I.
 401 West End Avenue
 State National Bank, Little Rock, Ark.
 Gardiner, Me.
 54 Stimson Avenue, Providence, R. I.
 10 Weybosset Street, Providence, R. I.
 Williamstown, Mass.
 506 Continental Building, Baltimore, Md.
 Worcester, Mass.
 119 East 31st Street
 303 West End Avenue
 303 West End Avenue
 23 East 64th Street
 Norwood Park, Chicago, Ill.
 Cranford, N. J.
 165 Broadway
 74 Vernon Street, Hartford, Conn.
 Prado 10, Havana, Cuba
 167 Tremont Street, Boston, Mass.
 5 Nassau Street
 Market and Fulton National Bank
 60 Broadway
 28 West 48th Street
 1 Broadway
 Gildersleeve, Conn.
 8 West 53d Street
 1566 Beacon Street, Boston, Mass.
 245 Washington Street
 208 Bernard Court, Madison, Wis.
 1221 Dean Street, Brooklyn
 77 Cedar Street
 418 West 118th Street
 Vineland, N. J.
 Trinity College, Durham, N. C.
 170 Broadway
 136 East 19th Street
 226 West 59th Street
 Columbia University
 9 Pine Street
 60 Wall Street
 657 Broadway
 801 G. Street, N. W., Washington, D. C.
 32 Broadway
 Bermeys 321, Asuncion, Paraguay
 2 East 55th Street
 96 Broadway
 Columbia University
 Staunton, Va.
 West Main Street, Conneaut, O.

- Gordon, W. S. 68 Leonard Street
 Gore, Thomas P. United States Senate, Washington, D. C.
 Gorton, Adelos Maple Glen, Montgomery Co., Pa.
 Gould, E. R. L. 15 West 38th Street
 Gould, Horace S. 37 Wall Street
 Govin, Antonio 70 Dragones Street, Havana, Cuba
 Gowan-Stoba, John 1735 McCormick Building, Chicago, Ill.
 Gram, Jesse P. 34 Nassau Street
 Grant, Percy Stickney 7 West 10th Street
 Grant, William T. 106 Central Park West
 Graves, E. W. First National Bank, Douglas, Ariz.
 Graves, Nelson Z. 22-24 South Third Street, Philadelphia, Pa.
 Gray, E. McQueen University of New Mexico, Albuquerque, N. Mex.
 Gray, Henry G. 49 Wall Street
 Gray, R. S. 3535 Telegraph Avenue, Oakland, Calif.
 Green, Herbert 1023 People's Gas Building, Chicago, Ill.
 Green, James M. State Normal School, Trenton, N. J.
 Green, Warren L. 70 Broad Street
 Greene, Francis V. 303 North Street, Buffalo, N. Y.
 Greene, John Arthur 100 Washington Square
 Greene, William H. Arch & 16th Streets, Philadelphia, Pa.
 Greene, Richard T. 544 West 114th Street
 Greenhut, Benedict J. Sixth Avenue & 18th Street
 Greeno, F. L. 909 Wilder Building, Rochester, N. Y.
 Greenough, William 55 Wall Street
 Gregory, R. H. 463 West Street
 Grenfell, Wilfred T. 14 Beacon Street, Boston, Mass.
 Griffin, Frederick R.* Sherbrooke & Simpson Sts., Montreal, Canada
 Griggs, Edward Howard Spuyten Duyvil, N. Y.
 Griggs, Herbert L. 48 Wall Street
 Grinnell, E. Morgan 36 East 50th Street
 Griswold, Chester 250 West 54th Street
 Groom, Wallace P.
 Academy of Music Bldg., Lafayette Ave. & Fulton St., Brooklyn, N. Y.
 Grossman, Moses H. 115 Broadway
 Grover, James H. Mortgage Trust Co., 124 North 4th St., St. Louis, Mo.
 Gubelman, Oscar L. 15 William Street
 Guggenheim, Simon 165 Broadway
 Guinzburg, A. M. 593 Broadway
 Guinzburg, Victor 725 Broadway
 Gunther, Franklin L. 391 Fifth Avenue
 Guthrie, W. B. 515 West 111th Street
 Guthrie, William D. 28 Park Avenue
 Gutierrez, Valeriano 11 Broadway
 Guy, Charles L. 335 Convent Avenue
 Guye, Charles Henry 44 West 69th Street
 Gwinn, Ralph W. 2 Rector Street
 Gwinnell, William B. 545 Mt. Prospect Avenue, Newark, N. J.
 Gwynn, Joseph K. 1 Wall Street

- Haas, Kalman 7 East 69th Street
 Haas, W. D. Bunkie, La.
 Hackett, Corcellus H. 31 Union Square
 Hadley, Miss Edith M. 57 West 73d Street
 Haeselbarth, Adam C. Leonia, N. J.
 Hager, William M. 165 Broadway
 Hagerman, H. J. Roswell, New Mexico
 Hagner, A. B. 1818 H Street, Washington, D. C.
 Haines, Charles Grove Whitman College, Walla Walla, Wash.
 Hale, Ledyard P. Capitol, Albany, N. Y.
 Hale, George D. 1059 Lake Avenue, Rochester, N. Y.
 Hale, Robert L. 163 East 36th Street
 Hall, Frederick J. 4 Benedict Avenue, Tarrytown, N. Y.
 Hall, John R. 100 Broadway
 Hall, Thomas C. Union Theological Seminary
 Halladay, Reginald Englewood, N. J.
 Halligan, Howard A. 463 West Street
 Ham, Arthur H. Room 1606, 31 Union Square
 Hamburger, L. 91 Fifth Avenue
 Hamilton, Foster The Bank of Alabama, Ensley, Ala.
 Hamilton, John L. Hoopestown, Ill.
 Hamlin, Philip Telephone Building, Denver, Colo.
 Hammill, C. W. 71 Broadway
 Hammond, Henry B. 51 Chambers Street
 Hammond, John Hays 71 Broadway
 Hammond, Mrs. John Hays 2315 Massachusetts Ave., Washington, D. C.
 Hammond, John Henry 40 Wall Street
 Hanaman, Charles E. P. O. Box, 527, Troy, N. Y.
 Handy, Parker D. 22 Pine Street
 Hanford, H. B. 633 Cooper Street, Camden, N. J.
 Hanna, Charles A. 15 Rockledge Avenue, Montclair, N. J.
 Hansmann, Carl A. 96 Broadway
 Hardings, W. P. First National Bank, Birmingham, Ala.
 Hardon, Henry W. 60 Wall Street
 Hardy, Sarah B. 419 West 118th Street
 Harkins, Walter S. Presboursburg, Ky.
 Harkness, W. L. 12 Broadway
 Harmon, William E. 261 Broadway
 Harned, Franklin M. 266 Lincoln Road, Brooklyn, N. Y.
 Harper, J. Henry Franklin Square
 Harper, R. A. 2936 Bainbridge Avenue
 Harriman, Mrs. J. Borden 35 East 49th Street
 Harris, Albert H. 135 Central Park West
 Harris, John F. 15 Wall Street
 Harrison, W. Z. Commercial Club, Salt Lake City, Utah
 Hart, Hastings H. 105 East 22d Street
 Hartshorn, Stewart Short Hills, N. J.
 Hartzell, Charles San Juan, Porto Rico
 Harvey, George Care of Harper Brothers, Franklin Square
 (24)

| | |
|-------------------------|--|
| Haskell, J. Amory | Room 1609, 140 Cedar Street |
| Haskin, Lincoln B. | 59 Main Street, Hempstead, N. Y. |
| Hasslacher, Jacob | 100 William Street |
| Hastings, H. S. | St. Mark's, Elk Co., Pa. |
| Hatch, A. J. | 20 Broad Street |
| Hatch, Edward W. | 37 Wall Street |
| Hatfield, Charles E. | West Newton, Mass. |
| Hathaway, Charles | 45 Wall Street |
| Havemeyer, F. C. | 34 East 37th Street |
| Hawkins, Eugene D. | 51 East 67th Street |
| Hawley, J. S., jr. | 3530 Third Street, San Diego, Calif. |
| Hay, Woodhull, | 164 East 61st Street |
| Haynes, John R. | 2324 South Figueroa, Los Angeles, Calif. |
| Hazard, F. R. | P. O. Box 2, Syracuse, N. Y. |
| Hazeltine, H. D. | Emmanuel College, Cambridge, England |
| Healy, A. Augustus | 70 Gold Street |
| Heaney, Frank J. | 351 Canal Street |
| Hebbard, Edgar C. | 28 Nassau Street |
| Hecker, Frank J. | 915 Union Trust Building, Detroit, Mich. |
| Hedges, Job E. | 165 Broadway |
| Hefner, William Clinton | 922 South 46th Street, Philadelphia, Pa. |
| Heller, Max | 1828 Morengo Street, New Orleans, La. |
| Heller, William H. | 400 West End Avenue |
| Henderson, Edward C. | 52 William Street |
| Hendrix, Eugene R. | 3242 Norledge Place, Kansas City, Mo. |
| Henry, Philip W. | 25 Broad Street |
| Hentz, Henry | 22 William Street |
| Hepburn, A. Barton | 83 Cedar Street |
| Hepburn, Mrs. A. Barton | 205 West 57th Street |
| Herczeg, Josika | 28 West 10th Street |
| Hermann, Ferdinand | 20 East 80th Street |
| Herring, Hubert C. | 287 Fourth Avenue |
| Herrman, Henry S. | 54 East 80th Street |
| Herrod, H. E. | National Metal Trades Association, Cleveland, O. |
| Hersey, Roscoe M. | Young Men's Christian Ass'n, Tientsin, China |
| Hershey, Omer F. | Mt. Washington, Md. |
| Hertenstein, Frederick | 3870 Reading Road, Avondale, Cincinnati, O. |
| Heyman, David M. | 314 West 87th Street |
| Hicks, F. C. | 7 Wall Street |
| Hiester, A. V. | 320 Race Avenue, Lancaster, Pa. |
| Higbie, Robert W. | Highland Avenue, Jamaica, L. I. |
| Higby, Chester P. | 210 Newton Street, Fairmount, W. Va. |
| Higginson, Henry L. | 44 State Street, Boston, Mass. |
| Highsaw, J. L. | Central High School, Memphis, Tenn. |
| Hill, Edward Finch | 333 Nelson Avenue, Peekskill, N. Y. |
| Hill, James J. | Great Northern Railway Building, St. Paul, Minn. |
| Hill, William Burr | 160 Broadway |
| Hillhouse, Mrs. James | Sachem's Wood, New Haven, Conn. |
| Hillard, C. W. | 71 Broadway |

| | |
|-------------------------|---|
| Hine, Francis L. | 2 Wall Street |
| Hines, W. D. | 52 William Street |
| Hinsdale, E. B. | Hotel Manhattan |
| Hirsch, Morris J. | 160 Broadway |
| Hirsch, Robert B. | Stamford, Conn. |
| Hirth, Friedrich | 401 West 118th Street |
| Hitchcock, Frederick S. | Box 202, New London, Conn. |
| Hoadley, Horace G. | 16 Fiske Street, Waterbury, Conn. |
| Hoagland, Joseph C. | 16 William Street |
| Hochschild, B. | P. O. Box 957 |
| Hodgman, George B. | 806 Broadway |
| Hoe, Mrs. Robert | 180 West 59th Street |
| Hoggson, W. J. | 7 East 44th Street |
| Holbrook, Percy | The Lucerne, 79th Street & Amsterdam Ave. |
| Holcomb, Alfred E. | 15 Dey Street |
| Holden, Arthur J. | Bennington, Vt. |
| Hollister, George Clay | New Rochelle, N. Y. |
| Hollister, Granger A. | Rochester, N. Y. |
| Holloway, Harry D. | 508 Land Title Building, Philadelphia, Pa. |
| Holly, Miss Mary Kissam | 252 West 76th Street |
| Holmes, John Haynes | 28 Garden Place, Brooklyn, N. Y. |
| Holstein, George M. | 24 State Street |
| Holt, Lucius H. | West Point, N. Y. |
| Holter, Edwin O. | Mount Kisco, N. Y. |
| Homer, C. S. | West Townsend, Mass. |
| Hopf, Harry Arthur | 95 Chauncey Street, Brooklyn, N. Y. |
| Hopkins, Arthur T. | Mechanical Rubber Co., Cleveland, O. |
| Hopkins, George B. | 52 Broadway |
| Hopkins, W. J. | 821 College Avenue, Racine, Wis. |
| Hoppin, William W. | 52 William Street |
| Hornblower, William B. | 30 Broad Street |
| Horst, George D. | Reading, Pa. |
| Horton, Lydiard | Hartley Hall, Columbia University |
| Hothron, E. G. | 42 Broadway |
| Hottenstein, Marcus S. | Commonwealth Building, Allentown, Pa. |
| Hough, Warwick M. | Rialto Building, 4th & Olive Sts., St. Louis, Mo. |
| Hourwich, Isaac A. | 919 Massachusetts Ave., N. E., Washington, D. C. |
| Howard, Frederick B. | 56 Arlington Street, Brockton, Mass. |
| Howe, Frank E. | Troy, N. Y. |
| Howe, James B. | 22 W. Highland Drive, Seattle, Wash. |
| Howell, Mrs. John White | 211 Ballantine Parkway, Newark, N. J. |
| Howell, Usher B. | Riverhead, N. Y. |
| Howell, Wilson S. | Pleasantville Station, Westchester Co., N. Y. |
| Howison, George H. | 2631 Piedmont Avenue, Berkeley, Calif. |
| Howland, Horace F. | 475 Fifth Avenue |
| Hoyt, Allen G. | 49 Wall Street |
| Hoyt, Arthur S. | 90 West Broadway |
| Hoyt, F. C. | 66 Third Avenue |
| Hoyt, Theodore R. | 72 Gold Street |

- Hubbard, Walter C. Coffee Exchange Building
Hudson, Sydney D. M. Bryn Mawr, Pa.
Hulet, J. R. Holbrook, Ariz.
Humphreys, Alexander C. Stevens Institute of Technology, Hoboken, N. J.
Humphreys, Edwin W. 406 East 85th Street
Hunley, W. M. University of Virginia, Charlottesville, Va.
Hunt, Mrs. Leigh 563 Park Avenue
Huntington, Archer M. 1083 Fifth Avenue
Huntsman, Owen B. 165 Broadway
Hutchison, Edward S. 34 South State Street, Newton, Pa.
Huttig, C. H. St. Louis, Mo.
Hyams, Godfrey M.* P. O. Box 5104, Boston, Mass.
Hyde, Henry St. John 210 East 18th Street
Hyman, Jacob S. Sea Cliff, L. I.
Hyman, Miss Louise 49 West 56th Street
Ichinomiya, R. 55 Wall Street
Ikelheimer, Mrs. Henry 524 Fifth Avenue
Iles, George * Park Avenue Hotel
Imbrie, James 301 West 75th Street
Imhoff, C. H. 195 Broadway
Ingham, William H. Algona, Ia.
Ingraham, Arthur 80 Irving Place
Irwin, I. I. San Diego, Calif.
Iselin, Adrian, jr. 711 Fifth Avenue
Iselin, Mrs. W. E. 745 Fifth Avenue
Isman, Felix 1328 South Pennsylvania Square, Philadelphia, Pa.
Ivins, William M. 27 William Street
Jackson, Percy 43 Cedar Street
Jacobs, Ralph K. 215 Montague Street, Brooklyn, N. Y.
James, Mrs. Arthur Curtiss 92 Park Avenue
James, Walter B. 17 West 54th Street
James, Mrs. Walter B. 17 West 54th Street
Janvier, Charles
Care of Canal-Louisiana Bank & Trust Co., New Orleans, La.
Jarvie, James N. 66 Broadway
Jay, Delancy K. 26 Liberty Street
Jay, Pierre 40 Wall Street
Jefferson, Howard McN. 80 Downing Street, Brooklyn, N. Y.
Jeidels, Otto Nehrenstr 32, Berlin, Germany
Jenkins, Mrs. Helen Hartley 232 Madison Avenue
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Jenks, Jeremiah W. New York University
Jennings, Frederic B. 86 Park Avenue
Jenswold, John, jr. 407 Palladio Building, Duluth, Minn.
Jess, Stoddard 2133 Harvard Building, Los Angeles, Calif.
Jewett, George L. 20 Fifth Avenue
Johnson, Bradish G. 829 Park Avenue
Johnson, Charles P. Navarre Building, St. Louis, Mo.
Johnson, C. W. 201 High Street, Holyoke, Mass.

- Johnson, Mrs. Eastman 65 West 55th Street
 Johnson, F. Cort 110 North Street
 Johnson, Grafton Greenwood, Ind.
 Johnson, J. Augustus 460 Scotland Road, South Orange, N. J.
 Johnson, John Theodore 417 48th Street, Brooklyn, N. Y.
 Johnson, Rankin 37 Madison Avenue
 Johnson, Remsen 187 Broadway
 Johnston, Allen W. 500 State Street, Schenectady, N. Y.
 Johnston, Howard A. 180 Sumner Street, Stamford, Conn.
 Jonas, Stephen 50 Wall Street
 Jones, Breckenridge Care of Mississippi Valley Trust Co., St. Louis, Mo.
 Jones, Charles H. 20 Broad Street
 Jones, Dwight A. 34 West 51st Street
 Jones, E. Milton 570 West 156th Street
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 Joy, Russell T. 78 McDonough Street, Brooklyn, N. Y.
 Judson, Harry Pratt University of Chicago, Chicago, Ill.
 Judson, Henry I. 96 Broadway
 Juilliard, A. D. 70 Worth Street
 Kagey, C. L. Beloit, Kan.
 Kahn, Otto H. 52 William Street
 Kalaw, Teodoro Paco, Manila, P. I.
 Kastor, Hugo 26-28 Cedar Street
 Kaul, John L. Birmingham, Ala.
 Kaupas, A. 64 Church Street, Pittston, Pa.
 Kebabian, George S. 60 Wall Street
 Keedy, Edwin R. 31 West Lake Street, Chicago, Ill.
 Keep, Charles H. 60 Broadway
 Kehew, Mrs. Mary Morton 29a Chestnut Street, Boston, Mass.
 Kelley, David J. 1925 Seventh Avenue
 Kelley, Mrs. Florence 106 East 19th Street
 Kellogg, J. H. Battle Creek, Mich.
 Kelly, Joseph I. 206 Northwestern University Building, Chicago, Ill.
 Kellor, Miss Frances A. 6 Montague Terrace, Brooklyn
 Kemmerer, Roy C. 92 Eastern Parkway, Brooklyn, N. Y.
 Kempner, Otto 44 Court Street, Brooklyn, N. Y.
 Kennett, Alfred Q. 5099 McPherson Avenue, St. Louis, Mo.
 Kenney, James W. 234 Seaver Street, Roxbury, Boston, Mass.
 Kent, Fred I. 7 Wall Street
 Kent, Robert B. Passaic, N. J.
 Kenyon, Albert J. 165 Broadway
 Kenyon, Robert N. 49 Wall Street
 Keppelman, John Arthur 540 Court Street, Reading, Pa.
 Kerr, David S. 516 Quebec Bank Building, Montreal, Canada
 Kerr, Walter 52 Wall Street
 Kidder, C. G. 27 William Street
 Kidder, Edward H. 17 Battery Place
 Kientzle, J. P. 256 East 11th Street, Erie, Pa.

- Kilbreth, James T. 45 Broadway
 Kimball, Everett Northampton, Mass.
 King, Miss Elizabeth G. 48 College Street, Providence, R. I.
 King, Landreth H. Grand Central Depot
 Kingsbury, Herbert D. Care of P. Lorillard & Co., Jersey City, N. J.
 Kingsbury, Joseph Lyman 406 East Jefferson Street, Kirksville, Mo.
 Kingsley, Darwin P. 346 Broadway
 Kingsley, W. M. 45 Wall Street
 Kinsey, Oliver P. Valparaiso, Ind.
 Kirchwey, George W. Columbia University
 Klink, Miss Jane Seymour 397 First Street, Brooklyn, N. Y.
 Knapp, Mrs. Harry K. 34 East 35th Street
 Knapp, Joseph P. 19th Street & Fourth Avenue
 Knapp, Martin A. Interstate Commerce Commission, Washington, D. C.
 Knauth, Antonio 39 West 76th Street
 Knauth, Mrs. Percival 302 West 76th Street
 Kneeland, Yale 117 East 60th Street
 Knevels, Miss M. E. 48 Wheeler Street, West Orange, N. J.
 Knox, Arthur 198 Broadway
 Knox, Herbert Allen 198 Broadway
 Knox, William E. 128 Bowry
 Kohler, Edgar J. 31 Nassau Street
 Kohlman, Hugo 30 Broad Street
 Korsmeyer, Mrs. Frederick A. Glen Cove, L. I.
 Krech, Mrs. Alvin 26 West 58th Street
 Kudlich, H. C. 299 Broadway
 Kuhn, Arthur K. 308 West 92d Street
 Kursheedt, Manuel A. 302 Broadway
 Kurtz, William B. 321 Chestnut Street, Philadelphia
 Kuser, Anthony R. Bernardsville, N. J.
 LaFollette, W. T. Siloam Springs, Ark.
 Lake, Emma S. 309 West 93d Street
 Lamar, Lucius Q. C. P. O. Box 830, Havana, Cuba
 Lambert, Adrian V. S. 168 East 71st Street
 Lamont, Thomas W. 2 Wall Street
 Lane, Nathan, jr. 195 Washington Park, Brooklyn, N. Y.
 Langeloth, Jacob P. O. Box 957, Riverside, Conn.
 Lapham, Mrs. J. J. 46 East 67th Street
 Largey, M. S. State Savings Bank, Butte, Mont.
 Larremore, Wilbur 32 Nassau Street
 Lathrop, Alanson P. "The Aphthorp," 79th Street & Broadway
 Lauer, Edgar J. 624 Madison Avenue
 Lauterbach, Edward 22 William Street
 Lauterbach, Mrs. Edward 761 Fifth Avenue
 Lawler, Thomas B. 70 Fifth Avenue
 Lawrence, William W. 22 East 47th Street
 Lawson, John Davison University of Missouri, Columbia, Mo.
 Leach, A. B. 149 Broadway
 Leake, Eugene W. 239 Washington Street, Jersey City, N. J.

- Leary, Mrs. George 1053 Fifth Avenue
 Leary, William V. 173 West 87th Street
 Lebermuth, I. Lauderdale Post Office, St. James Parish, La.
 LeBosky, Jacob C. 127 North Dearborn Street, Chicago, Ill.
 Leckie, A. E. L. Southern Building, Washington, D. C.
 Lee, E. A. Oakland Road, South Orange, N. J.
 Lee, H. M. 59 Pearl Street
 Leeds, Mrs. Warner Mifflin 11 East 65th Street
 Leffingwell, R. C. 144 East 65th Street
 LeGendre, William 59 Wall Street
 Léger, J. N. Port au Prince, Haiti
 Legg, Chester Arthur 63 Board of Trade Building, Chicago, Ill.
 Lehman, Arthur 16 William Street
 Lehman, Irving County Court House
 Leland, Arthur S. 40 Exchange Place
 Leland, Francis L. New York County National Bank
 Lemaghi, Louis F. Collinsville, Ill.
 Lemann, Monte M. 6317 St. Charles Avenue, New Orleans, La.
 Leshner, Arthur L. 670 Broadway
 Lesinsky, Albert R. 220 Broadway
 Leupp, William H. 90 Wall Street
 Leverett, George V. 53 Devonshire Street, Boston, Mass.
 Levi, Julian Clarence 105 West 40th Street
 Levy, Charles E. Cotton Exchange Building
 Levy, Felix H. 268 West 94th Street
 Levy, Jefferson M. 27 Pine Street
 Lewis, Burdette G. 51 Chambers Street
 Lewis, Charles S. 217 Fletcher-American National Bank Building, Indianapolis, Ind.
 Lewis, George A. 31 Erie County Savings Bank, Buffalo, N. Y.
 Lewis, O. F. 135 East 15th Street
 Lewisohn, Adolph 42 Broadway
 Lewisohn, Sam A. 42 Broadway
 Lichtenstein, Alfred 171 West 71st Street
 Liebeskind, Solon J. 41 Park Row
 Liebman, David 40 East 72d Street
 Light, John H. South Norwalk, Conn.
 Lincoln, Jonathan T. Fall River, Mass.
 Lincoln, Lowell 345 Broadway
 Lindsay, John D. 34 West 11th Street
 Lindsay, L. Seton 346 Broadway
 Lindsay, Samuel McCune Columbia University
 Lindsey, Ben B. Court House, Denver, Colo.
 Lingley, Richard T. 527 Fifth Avenue
 Lipman, F. L. Care of Wells Fargo Nevada Natl. Bank, San Francisco, Calif.
 Lippitt, Costello Norwich, Conn.
 Lisman, F. J. 30 Broad Street
 Lissner, M. 524 South Spring Street, Los Angeles, Calif.
 Littauer, Lucius N. 715 Broadway

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|--------------------------|---|
| Littleton, Martin W. | 2 Rector Street |
| Livermore, Arthur L. | 30 Broad Street |
| Loeb, Isidor | University of Missouri, Columbia, Mo. |
| Loeb, Jacob M. | 29 South LaSalle Street, Chicago, Ill. |
| Loeb, James | 52 William Street |
| Loeb, Otto S. | 35 Wall Street |
| Loesch, Frank J. | 10 South LaSalle Street, Chicago, Ill. |
| Loeser, Vincent | 320 West 108th Street |
| Loewy, Benno | 206 Broadway |
| Lombardi, C. | "The News," Dallas, Texas |
| Loomis, Guy | 817 Carroll Street, Brooklyn, N. Y. |
| Lord, Chester S. | 170 Nassau Street |
| Lovejoy, Owen R. | 105 East 22d Street |
| Lovett, Robert Scott | Locust Valley, Long Island, N. Y. |
| Low, Seth | 30 East 64th Street |
| Low, William Gilman, jr. | Bristol, R. I. |
| Lowden, Frank O. | Oregon, Ill. |
| Lowry, Robert J. | Atlanta, Ga. |
| Lucas, A. B. | Meadows, Idaho |
| Luce, H. J. | 4 East 52d Street |
| Luce, W. A. | Ellsworth, Pa. |
| Ludington, Arthur C. | 56 West 10th Street |
| Ludlum, Clarence A. | 57 Highland Avenue, Jamaica, L. I. |
| Lummis, Miss Eliza O'B. | 324 West 103d Street |
| Lummis, William | 45 Wall Street |
| Lundien, E. M. | Dayton, Ia. |
| Lustgarten, W. | 68 William Street |
| Lyall, William L. | 349 Aycrigg Avenue, Passaic, N. J. |
| Lybyer, Albert Howe | 153 South Cedar Avenue, Oberlin, O. |
| Lydig, Philip M. | 38 East 52d Street |
| Lynch, Mrs. Jerome H. | 58 West 58th Street |
| Lyons, Samuel Clay | Louisville, Ky. |
| Maas, Charles O. | 87 Nassau Street |
| Mabon, James B. | 59 West 70th Street |
| Mabon, William | Wards Island |
| MacArthur, Arthur F. | 11 Pine Street |
| MacDonald, Charles B. | 71 Broadway |
| MacDonald, George | 315 West 90th Street |
| MacDuffie, Rufus L. | Bronxville, N. Y. |
| Macfarland, Charles S. | 215 Fourth Avenue |
| MacGregor, Ford H. | 215 North Brooks Street, Madison, Wis. |
| Machen, Arthur W., jr. | Central Savings Bank Building, Baltimore, Md. |
| Mackay, Clarence H. | 253 Broadway |
| MacKelvie, N. Bruce | 25 Broad Street |
| MacLay, Mark W., jr. | 830 Park Avenue |
| MacLean, Charles F. | 5th Avenue & 130th Street |
| MacLean, James A. | Moscow, Idaho |
| MacQuoid, C. W. | Roselle, N. J. |
| Mac Veagh, Franklin | 2829 Sixteenth Street, Washington, D. C. |

- Macy, Carleton
 Macy, Miss Carroll
 Macy, V. Everit
 Mahoney, Stephen A.
 Main, William A.
 Mairs, Mrs. E. H.
 Malkenson, Arthur L.
 Maloney, Miss Ellen
 Mandlebaum, Miss M.
 Manning, William T.
 Manning, W. W.
 Mansfield, Howard
 Marden, Francis Skiddy
 Marié, Léon
 Markle, John
 Markle, Mrs. John
 Marks, Laurence H.
 Marks, Marcus M.
 Marling, Alfred E.
 Marsh, Robert McC.
 Marshall, Charles C.
 Marston, Edgar L.
 Marston, Edwin S.
 Martin, Bradley, jr.
 Martin, John
 Martin, Newell
 Martin, R. W.
 Martindale, J. B.
 Marvel, Josiah
 Marx, Otto
 Mason, Charles N.
 Mason, Lewis D.
 Masten, George H.
 Masters, Miss L. B.
 Mastin, J. Edward
 Mather, Samuel
 Mathews, George Brewster
 Mathews, J. M.
 Mathewson, Charles F.
 Matienze, Jose Nicholas
 Matthews, T. A.
 Maurice, William G.
 Maxwell, Robert
 Mayer, Julius M.
 Mayer, Levy
 McAdoo, W. G.
 McAneny, George
 McBain, Howard Lee
 McCall, John C.
 Hewlett, L. I.
 "Birch Corners," Hewlett, L. I.
 68 Broad Street
 630 Dwight Street, Holyoke, Mass.
 214 Broadway
 Irvington-on-Hudson, N. Y.
 102 Bowery
 440 Riverside Drive
 205 West 57th Street
 27 West 25th Street
 70 State Street, Boston, Mass.
 49 Wall Street
 449 Park Avenue
 1 West 54th Street
 Jeddo, Pa.
 723 Fifth Avenue
 Lawrence, L. I.
 687 Broadway
 35 West 47th Street
 45 West 11th Street
 34 Pine Street
 24 Broad Street
 16-22 William Street
 6 East 87th Street
 Grymes Hills, Stapleton, Staten Island, N. Y.
 20 Exchange Place
 25 Nassau Street
 270 Broadway
 Wilmington, Del.
 Birmingham, Ala.
 62 Cedar Street
 171 Joralemon Street, Brooklyn, N. Y.
 425 West 118th Street
 Dobbs Ferry, N. Y.
 3 Broad Street
 Western Reserve Building, Cleveland, O.
 830 Delaware Avenue, Buffalo, N. Y.
 417 Lincoln Hall, Urbana, Ill.
 55 Wall Street
 3770 Calle Santa Fe, Buenos Aires, R. A.
 165 Broadway
 Hot Springs, Ark.
 334 Fourth Avenue
 43 Exchange Place
 76 West Monroe Street, Chicago, Ill.
 30 Church Street
 19 East 47th Street
 Madison, Wis.
 346 Broadway

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 McClement, J. H. 135 Broadway
 McCready, N. L. 38 Wall Street
 McCrum, Lloyd G. 103 Park Avenue
 McElderry, H. L. Talladega, Ala.
 McEnerney, Garrett W. 1277 Flood Building, San Francisco, Calif.
 McGarrah, G. W. 33 Wall Street
 McGinley, J. R. 5000 Forbes Street, Pittsburgh, Pa.
 McGrath, Miss Madge 921 Canal Street, New Orleans, La.
 McGraw, James H. 239 West 39th Street
 McGuckin, William G. 176 West 105th Street
 McIlvaine, Tompkins 52 William Street
 McIntosh, C. K. The Bank of California, San Francisco, Calif.
 McIntyre, John F. 30 Broad Street
 McIntyre, William H. 201 West 55th Street
 McKeag, Edwin C. 223 Somerset Street, New Brunswick, N. J.
 McKenna, Thomas P. 41 Wall Street
 McKeon, John C. Hempstead, N. Y.
 McLaren, Kenneth K. 37 Wall Street
 McLean, A. W. Lumberton, N. C.
 McMahan, J. Sprigg Dayton, Ohio
 McMillin, Emerson 40 Wall Street
 McNeir, George 575 Fifth Avenue
 McNulty, William D. 141 Broadway
 McPherson, Logan G. Bureau of Railway Economics, Washington, D. C.
 McQueen, W. Ludowici, Ga.
 McReynolds, J. C. 141 Broadway
 McRoberts, Samuel 55 Wall Street
 McWilliams, Daniel W. 39 South Portland Avenue, Brooklyn, N. Y.
 Mead, Joseph H. The County Trust Co., White Plains, N. Y.
 Meagley, George C. 884 Massachusetts Avenue, Cambridge, Mass.
 Mehan, William A. Ballston Spa, N. Y.
 Meldrim, Peter W. Savannah, Ga.
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 Melvin, E. C. Selma National Bank, Selma, Ala.
 Menken, S. Stanwood 34 West 52d Street
 Mereness, Newton D. Bridgeport, Conn.
 Merrick, H. F. Kensington, O.
 Mershon, Ralph D. 65 West 54th Street
 Metcalf, E. P. Atlantic National Bank, Providence, R. I.
 Metcalfe, Henry 147 Fourth Avenue
 Metcalfe, J. G. 55 Central Park West
 Metz, Herman A. 122 Hudson Street
 Meyer, Mrs. Aubrey Edgerton The Castle, Whitehall, N. Y.
 Meyer, Ernst C. 224 Custom House
 Meyer, Eugene, jr. 7 Wall Street

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 Miller, George N. 811 Madison Avenue
 Miller, Henry F. 44 Pine Street
 Miller, James Alexander 18 West 51st Street
 Miller, Samuel H. 121 East Union Avenue, Bound Brook, N. J.
 Miller, W. B. Chattanooga, Tenn.
 Mills, W. McMaster 753 Fifth Avenue
 Miner, Miss Maude E. 38 West 10th Street
 Mitchell, Edward Page *The Sun* Office
 Mitchell, Francis B. *The Post Express*, Rochester, N. Y.
 Mix, M. W. Dodge Mfg. Co., Mishawaka, Ind.
 Mohrenstecher, G. A. Long Beach, Calif.
 Monroe, Robert Grier 26 Liberty Street
 Montgomery, Robert H. 55 Liberty Street
 Moore, John Bassett Columbia University
 Moot, Adelbert 45 Erie County Savings Bank, Buffalo, N. Y.
 Morawetz, Victor A. 44 Wall Street
 Mordecai, T. Moultrie Broad and State Streets, Charleston, S. C.
 More, C. E. 318 Home Insurance Building, Chicago, Ill.
 Morgan, Miss Anne 219 Madison Avenue
 Morgan, George Wilson 32 Liberty Street
 Morgan, J. P. 23 Wall Street
 Morgan, William Fellowes Arch 5, Brooklyn Bridge
 Morgenthau, Henry 165 Broadway
 Morgenthau, J. C. 87 Nassau Street
 Morris, Dave H. 19 East 70th Street
 Morris, Henry C. 924 Marquette Building, Chicago, Ill.
 Morrison, George Austin 27 Beaver Street
 Morrow, Dwight W. 62 Cedar Street
 Morse, A. E. 223 Fourth Street, Marietta, O.
 Morse, Anson D. Amherst College, Amherst, Mass.
 Morse, Edmund H. 117 West 58th Street
 Mott, Howard S. 100 Broadway
 Moulton, Irving P. 2199 Derisadero Street, San Francisco, Calif.
 Muchnic, Charles M. 800 Riverside Drive
 Muhleman, Maurice L. 27 Thames Street
 Mulry, Thomas M. 543 West 21st Street
 Mundy, Floyd Woodruff 20 Broad Street
 Munn, John P. 18 West 58th Street
 Munroe, Vernon Englewood, N. J.
 Murphy, Franklin 224 McWhorter Street, Newark, N. J.
 Muschenheim, Mrs. Frederick A. 218 West 45th Street
 Mussey, Henry Raymond Columbia University
 Myers, W. Fenton 20 Market Street, Amsterdam, N. Y.
 Myers, Nathaniel 135 Central Park West
 Myers, William S. 17 Madison Avenue
 Nadal, Charles C. 142 East 35th Street
 Neal, Emmett O. Montgomery, Ala.

| | |
|------------------------------|---|
| Nelson, Richard Marshall | Lillington, N. C. |
| Nevius, David | 160 Fifth Avenue |
| Newberger, A. L. | 31 West 23d Street |
| Newborg, Leo D. | 30 West 95th Street |
| Newcomer, Waldo | National Exchange Bank, Baltimore, Md. |
| Newton, Howard D. | 371 North Broad Street, Norwich, N. Y. |
| Nichols, Morton C. | 1 East 39th Street |
| Nicholson, John | 32 Nassau Street |
| Nicoll, DeLancey | 23 East 39th Street |
| Noble, Alfred | 501 West 120th Street |
| Nolan, Edward C. | First National Bank, Reading, Pa. |
| Northrop, Charles P. | 49 St. Nicholas Place |
| Norton, Charles D. | 36 East 36th Street |
| Nottingham, William | 701 Walnut Avenue, Syracuse, N. Y. |
| Noyes, Henry T., jr. | Rochester, N. Y. |
| Nunemacher, F. C. | 611-613 Union Trust Building, Washington, D. C. |
| Nye, Olin T. | Seneca Street, Watkins, N. Y. |
| Oakman, Walter G. | 62 Cedar Street |
| Obermayer, C. J. | 502 8th Avenue, Brooklyn, N. Y. |
| Ochs, Adolph S. | <i>New York Times</i> |
| O'Donnell, Miss Alice | 320 Jones Street, Memphis, Tenn. |
| Oeland, Isaac R. | 189 Montague Street, Brooklyn, N. Y. |
| Ogden, Robert C. | 125 East 56th Street |
| Ogden, Rollo | 20 Vesey Street |
| O'Gorman, Richard | 51 Chambers Street |
| Ogg, Frederic A. | 401 Broadway, Cambridge, Mass. |
| Olin, John M. | 762 Langdon, Madison, Wis. |
| Olin, Stephen H. | 32 Nassau Street |
| Olney, Peter B. | 68 William Street |
| Olney, Richard | 710 Sears Building, Boston, Mass. |
| Opdyke, William S. | 20 Nassau Street |
| Oppenheim, Edward L. | 104 East 65th Street |
| Oppenheimer, Henry S. | 11 East 43d Street |
| Ordway, Samuel H. | 27 William Street |
| Ortiz, Fernando | Aguivav, 68, Havana, Cuba |
| Osborn, Mrs. Henry Fairchild | 850 Madison Avenue |
| Osborn, William Church | 71 Broadway |
| Osborne, Thomas | Auburn, N. Y. |
| Osgood, Herbert L. | 526 West 150th Street |
| Outerbridge, E. H. | 11 Broadway |
| Owens, George W. | Citizens Trust Building, Savannah, Ga. |
| Owens, W. W. | 289 Clinton Avenue, Brooklyn, N. Y. |
| Page, Alfred R. | County Court House |
| Page, Edward D. | Oakland, N. J. |
| Page, Howard W. | 32 South Broad Street, Philadelphia, Pa. |
| Page, William H. | 32 Liberty Street |
| Paine, George H. | 718 Land Title Building, Philadelphia, Pa. |
| Palmer, Henry B. | 334 Canal Street |
| Palmieri, F. L. | 50 East 63d Street |

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|----------------------------|---|
| Pam, Max | 71 Broadway |
| Parish, Edward C. | 52 Wall Street |
| Parish, Henry | 52 Wall Street |
| Parker, Alton B. | Esopus, N. Y. |
| Parker, Ashton | 330 West 85th Street |
| Parker, Robert A. | 81 Fulton Street |
| Parrish, R. L. | Covington, Va. |
| Parsons, Herbert | 52 William Street |
| Parsons, John E. | 52 William Street |
| Parsons, W. L. | Rockingham, N. C. |
| Partridge, Frank H. | 140 West 69th Street |
| Paskus, Benjamin G. | 128 Broadway |
| Patterson, John L. | Roanoke Rapids, N. C. |
| Patterson, W. J. | 60 Broadway |
| Pavey, Frank D. | 32 Nassau Street |
| Payne, James M. | 1210 Virginia Street, Charleston, W. Va. |
| Peabody, R. C. | 11 Broadway |
| Pearson, F. S. | 115 Broadway |
| Peaslee, Edward H. | 17 Washington Square, North |
| Peckitt, Leonard | Catasauqua, Pa. |
| Peierls, Siegfried | 453 Broome Street |
| Penman, John Simpson | "Holywell," Katonah, N. Y. |
| Penrose, Stephen B. L. | 41 College Avenue, Walla Walla, Wash. |
| Perkins, George E. | 41 Union Square |
| Perkins, George W. | 71 Broadway |
| Perrin, John | 480 South Orange Grove Avenue, Pasadena, Calif. |
| Perry, Mrs. William A. | 7 East 56th Street |
| Peters, William R. | 55 John Street |
| Pettit, Franklin | 2 Wall Street |
| Peyser, Julius I. | 318 Southern Building, Washington, D. C. |
| Pflum, H. Doane | 346 Broadway |
| Phelan, Thomas A. | 93 Front Street |
| Phelps, Ansel | 29 Wall Street |
| Phelps, Mrs. Marion Von R. | 70 West 49th Street |
| Philips, Frederic D. | 15 William Street |
| Phillips, Louis S. | 49 Broadway |
| Phoenix, Lloyd | 21 East 33d Street |
| Pierce, Winslow S. | 115 Broadway |
| Pierson, Lewis E. | Irving Exchange National Bank |
| Pilat, Oliver T. | 562 West 183d Street |
| Pinkus, Frederick S. | 103 Franklin Street |
| Place, Ira A. | Grand Central Station |
| Plant, Albert | 120 William Street |
| Platt, Edward T. | 205 West 57th Street |
| Platt, Mrs. Frank H. | 242 West 74th Street |
| Plaut, Joseph | 120 William Street |
| Plimpton, George A. | 70 Fifth Avenue |
| Polk, William M. | 7 East 36th Street |
| Pollak, Francis D. | 49 Wall Street |

- Pollock, J. S.
 Pompan, Maurice A.
 Pond, Oscar L.
 Poor, Ruel W.
 Porter, William H.
 Post, Abram S.
 Post, James H.
 Potter, Mrs. Blanche
 Potter, Frederick
 Potter, Mrs. Gilbert
 Powell, Henry M.
 Powell, Thomas Reed
 Powell, William H.
 Pratt, Mrs. Herbert
 Pratt, Mrs. John
 Prentice, Ezra P.
 Prentiss, William A.
 Prescott, Arthur T.
 Preston, Harold
 Price, George M.
 Price, Theodore H.
 Prim, C. A.
 Prince, John D.
 Proctor, Mrs. Charles E.
 Prosser, Seward
 Prout, Henry
 Pruyn, Robert C.
 Pryer, Charles
 Puffer, W. M.
 Puig, Miss Louise M.
 Pulitzer, Miss Constance
 Pulitzer, Ralph
 Purdy, W. E.
 Purrington, William A.
 Putney, Edmonds
 Putney, Miss Eva
 Quackenbush, James L.
 * Quesada, Ernesto
 Quimby, Charles E.
 Quinn, John
 Quinn, Thomas J.
 Randolph, Stuart F.
 Ransom, Rastus S.
 Ransom, William L.
 Raper, C. L.
 Rappard, William E.
 Rascovar, James
 Ratcliff, J. P.
 Raven, A. A.
- 606 West 2d Street, Little Rock, Ark.
 80 Avenue C
 Law Building, Indianapolis, Ind.
 200 Fifth Avenue
 23 Wall Street
 81 Fulton Street
 129 Front Street
 180 West 59th Street
 71 Broadway
 239 East 60th Street
 51 Chambers Street
 Columbia University
 1170 Broadway
 213 Clinton Avenue, Brooklyn, N. Y.
 11 East 61st Street
 32 Nassau Street
 207 Elm Street, Holyoke, Mass.
 739 North Street, Baton Rouge, La.
 605 Lowman Building, Seattle, Wash.
 202 Marcy Avenue, Brooklyn, N. Y.
 24 South William Street
 Banifay, Holmes County, Fla.
 Sterlington, Rockland Co., N. Y.
 Great Neck, L. I.
 389 Fifth Avenue
 30 Church Street
 60 State Street, Albany, N. Y.
 P. O. Box 647, New Rochelle, N. Y.
 Kalamazoo, Mich.
 40a Hampton Place, Brooklyn, N. Y.
 7 East 73d Street
 17 East 73d Street
 83 Cedar Street
 43 West 11th Street
 116 West 73d Street
 110 West 73d Street
 362 Riverside Drive
 Libertad 946, Buenos Aires, R. A.
 278 West 86th Street
 31 Nassau Street
 2345 Valentine Avenue
 31 Nassau Street
 338 West 77th Street
 550 Riverside Drive
 Chapel Hill, N. C.
 59 Fayerweather Street, Cambridge, Mass.
 26 Beaver Street
 Cunningham, Kan.
 864 President Street, Brooklyn, N. Y.

- Rawles, William A. 924 East 3d Street, Bloomington, Ind.
 Read, William A. 31 Pine Street
 Redding, Miss Helen E. 145 South Oxford Street, Brooklyn, N. Y.
 Reed, Alfred Z. 454 West 152d Street
 Reed, Charles 38 North Moore Street
 Reed, Frederick H. 120 Riverside Drive
 Reese, Richard Equitable Guarantee & Trust Co., Wilmington, Del.
 Reeves, Herbert 55 Liberty Street
 Remick, William H. 37 Wall Street
 Revell, Fleming H. Riverdale-on-Hudson, N. Y.
 Reynolds, Mrs. James B. 151 Central Park West
 Rhoades, John Harsen 66 Beaver Street
 Rhodes, R. R. 1206 Citizens Building, Cleveland, O.
 Rice, Isaac L. 5 Nassau Street
 Rice, William M. J. 15 West 67th Street
 Rich, Charles A. 320 Fifth Avenue
 Richards, C. R. Cooper Union, N. Y.
 Richards, R. O. Huron, S. Dak.
 Richmond, T. C. Mendota Block, Madison, Wis.
 Ridge, W. N. 302 Broadway
 * Riker, John J. 46 Cedar Street
 Ripley, E. A. Mandan, N. Dak.
 Rives, George L. 32 Nassau Street
 Robb, Mrs. N. Thayer 35 East 64th Street
 Robbins, Howard C. 209 Madison Avenue
 Robinson, Allan 165 Broadway
 Robinson, George B. 415 Broome Street
 Robinson, George Henry 26 Exchange Place
 Robinson, Mrs. Gilbert 541 West 124th Street
 Robinson, James H. 567 West 113th Street
 Robinson, Nelson L. 435 West 119th Street
 Rochester, Mrs. Richmond Whitestone, L. I.
 Rockefeller, P. A. 26 Broadway
 Roeser, John E. 795 St. Nicholas Avenue
 Rogers, F. Theo. Care of "*Philippines Free Press*," Manila, P. I.
 Rojas, P. Ezequiel 1017 Sixteenth Street, Washington, D. C.
 Roome, William J. 101 East 57th Street
 Root, Charles T. 231 West 39th Street
 Root, Elihu Washington, D. C.
 Rosen, Felix 25 Broad Street
 Rosenbaum, M. 603 South Third Street, Philadelphia, Pa.
 Rosenfeld, Edward L. 35 South William Street
 Rosenfeld, Henry L. 165 Broadway
 Ross, Edward A. University of Wisconsin, Madison, Wis.
 Ross, P. Sanford 277 Washington Street, Jersey City, N. J.
 Rossbach, Jacob 55 Frankfort Street
 Rossiter, Van Wyck Nyack, N. Y.
 Rothbarth, H. 30 Quex Road, West Hampstead, London, N. W., England
 Rothschild, Maurice 49 West 72d Street

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|-----------------------------|--|
| Rounds, Arthur C. | 96 Broadway |
| Rowe, Louis Cass | 40 East Utica Street, Oswego, N. Y. |
| Rowe, William V. | 133 East 38th Street |
| Rublee, Mrs. Juliet Barrett | 116 East 58th Street |
| Rudd, Channing | 15 Wall Street |
| Rudolphy, Mrs. Gustave C. | 148 East 62d Street |
| Rundell, Oliver S. | University of Wisconsin, Madison, Wis. |
| Rumsey, Mrs. Charles | Arden, Orange Co., N. Y. |
| Ruppert, Jacob, jr. | 1639 Third Avenue |
| Rush, Thomas E. | 71 East 90th Street |
| Rushmore, Charles E. | 40 Wall Street |
| Ryle, Arthur | 225 Fourth Avenue |
| Sabin, Charles H. | 28 Nassau Street |
| Sachs, Bernard | 135 Central Park West |
| Sachs, Harry | 60 Wall Street |
| Sachs, Julius | Teachers College, Columbia University |
| Sachs, Ralph L. | 28 West 22d Street |
| Sachs, Samuel | 46 West 70th Street |
| Sage, Dean | 49 Wall Street |
| Saggu, Mohammad Khairuddin | |
| | Royal Colonial Institute, Northumberland Ave., London, W.C., England |
| Saklatvala, P. D. | 83 Grand Street |
| Samson, C. F. | 20 Broad Street |
| Samson, Harry G. | 433 Sixth Avenue, Pittsburgh, Pa. |
| Sanders, J. C. | Fourth Street, Fort Madison, Ia. |
| Sanguinette, S. S. | 542 West 124th Street |
| Sargent, William D. | 90 West Street |
| Satterlee, Herbert L. | 37 East 36th Street |
| Saul, Charles R. | 149 Columbus Avenue |
| Saunders, Bertram A. | Nyack, N. Y. |
| Saunders, Charles C. | 95 Milk Street, Boston, Mass. |
| Saunders, William E. G. | Emmetsburg, Iowa |
| Schaffer, Frank | 85 Rockland Avenue, Park Hill, Yonkers, N. Y. |
| Schefer, Carl | 40 West 37th Street |
| Schermerhorn, F. Augustus | 25 Liberty Street |
| Scherr, Harry | Williamson, West Va. |
| Schiff, Jacob H. | 27 Pine Street |
| Schiff, Mortimer L. | William & Pine Streets |
| Schlapp, Max G. | 40 East 41st Street |
| Schley, Grant B. | 80 Broadway |
| Schmitt, Arthur J. | 1127 Vine Street, Cincinnati, O. |
| Schniewind, H., jr. | 18 West 18th Street |
| Scholefield, E. O. S. | Legislative Library, Victoria, B. C., Canada |
| Schott, Charles M., jr. | 25 Broad Street |
| Scoville, Mrs. Helen M. | 2042 Fifth Avenue |
| Schreiber, George C. | 55 Liberty Street |
| Schubring, E. J. B. | Badger Block, Madison, Wis. |
| Schurz, Miss Agatha | 24 East 91st Street |
| Schuster, Edward | 2a Capuchinas 48, Mexico City, Mex. |

- Schwab, Gustav H. 4 East 48th Street
 Schwarz, Herbert F. 255 West 108th Street
 Schwarzenbach, Robert J. F. 472 Broome Street
 Scott, Frank H. Century Company, Union Square
 Scribner, Sam A. Broadway and 47th Street
 Scudder, Edward M. 59 Wall Street
 Scudder, Townsend 112 Willow Street, Brooklyn, N. Y.
 Scull, Charles O. Roland Park, Md.
 Seabury, William M. Fleming Building, Phoenix, Ariz.
 Seager, Henry Rogers, Columbia University
 Seaman, Alfred P. W. 147 West 87th Street
 Seaman, Louis L. 247 Fifth Avenue
 Sears, J. H. 35 West 32d Street
 Seelig, Mr. S. 5025 McPherson Avenue, St. Louis, Mo.
 Seevers, George W. Metropolitan Life Building, Minneapolis, Minn.
 Seggerman, Mrs. Victor 422 West 144th Street
 Seko, Konosuke 445 Broome Street
 Seligman, E. R. A. Columbia University
 Seligman, Mrs. Henry 30 West 56th Street
 Seligman, Isaac N. 1 William Street
 Seligman, Jefferson 1 William Street
 Sessoms, E. M. R. F. D. No. 1, Caryville, Fla.
 Severance, L. H. Waldorf-Astoria Hotel
 Sexton, Lawrence E. 34 Pine Street
 Sexton, J. S. Hazelhurst, Miss.
 Shackleton, James H. Fidelity Trust Co., Newark, N. J.
 Shaffner, Henry F. 403 High Street, Winston Salem, N. C.
 Shattuck, Henry L. 60 State Street, Boston, Mass.
 Shaw, Albert 13 Astor Place
 Shaw, William N. 165 Broadway
 Shearn, Clarence J. 258 West 94th Street
 Sheehan, William F. 14 Wall Street
 Sheldon, George R. 24 East 38th Street
 Shelton, Thomas Wall Norfolk, Va.
 Shepard, Charles E. 614 New York Building, Seattle, Wash.
 Shepherd, W. R. 468 Riverside Drive
 Sherman, Gordon E. Ogden Place, Morristown, N. J.
 Shientag, Bernard L. 165 Broadway
 Shipman, Henry R. Princeton, N. J.
 Shoemaker, Herbert B. 31 Nassau Street
 Shove, Benjamin J. 365 Green Street, Syracuse, N. Y.
 Sickles, D. E. 23 Fifth Avenue
 Sidenberg, George M. 45 East 49th Street
 Siegel, Henry Simpson Crawford Co., 19th St. and 6th Ave.
 Silliman, Reuben D. 609 West 158th Street
 Simkhovitch, V. G. 26 Jones Street
 Simmons, Frank H. 110 Centre Street
 Simpson, George W. 90 West Broadway
 Simpson, John W. 62 Cedar Street

| | |
|----------------------------|---|
| Sinclair, A. G. | 429 Elgin Avenue, Winnipeg, Canada |
| Sinclair, Miss Marjorie T. | 471 Park Avenue |
| Slade, C. C. | 83 Cedar Street |
| Slade, Francis Louis | 18 West 52d Street |
| Sleicher, Reuben P. | 225 Fifth Avenue |
| Sloan, Benson Bennett | 38 Wall Street |
| Sloane, William M. | 105 East 69th Street |
| Smith, Arthur J. | 541 Lexington Avenue |
| Smith, C. P. | Burlington Savings Bank, Burlington, Vt. |
| Smith, Eugene | 39 West 68th Street |
| Smith, Frederick M. | 630 S. Crysler Street, Independence, Mo. |
| Smith, Harry T. | 56-58 St. Michael Street, Mobile, Ala. |
| Smith, Munroe | 169 East 70th Street |
| Smith, Nelson | 151 West 48th Street |
| Smith, R. A. C. | 100 Broadway |
| Smith, S. L.* | 1013 Woodward Avenue, Detroit, Mich. |
| Smyth, Herbert C. | 15 Wall Street |
| Snow, Elbridge G. | 56 Cedar Street |
| Snyder, V. P. | 31 Nassau Street |
| Sommer, Frank H. | 738 Broad Street, Newark, N. J. |
| Sommerich, Edwin | 626 Broadway |
| Sondheim, Phineas | 49 Wall Street |
| Soper, Alexander C. | Lakewood, N. J. |
| Soper, Erastus B. | Emmetsburg, Ia. |
| Sprague, Frank J. | 165 Broadway |
| Spence, Miss Clara B. | 30 West 55th Street |
| Spencer, A. H. | 90 West Street |
| Spencer, Charles W. | 114 Fitz Randolph Road, Princeton, N. J. |
| Spencer, Henry R. | Ohio State University, Columbus, O. |
| Speranza, Gino C. | 40 Pine Street |
| Spiegelberg, F. | 36 West 76th Street |
| St. Goar, F. | 35 Wall Street |
| Standish, Myles | 20 Nassau Street |
| Stangeland, Charles E. | Department of State, Washington, D. C. |
| Stanley, Edward O. | 176 Broadway |
| Starr, William J. | Eau Claire, Wis. |
| Starace, Achille | 32 Broadway |
| Stason, Edwin J. | Sioux City, Ia. |
| Staton, Henry | 80 Broadway |
| Stauffen, Ernest, jr. | 119 Fifth Avenue |
| Steckler, Edward L. | 61 West 88th Street |
| Steele, Charles | 23 Wall Street |
| Stein, Leo | 37 West 90th Street |
| Steinan, Edward S. | 52 William Street |
| Steinkamp, William H. | 34 West 190th Street |
| Steinman, H. G. | Cullom, Ill. |
| Sterling, Miss Ada | 58 West 57th Street |
| Stern, Edgar B. | 5115 St. Charles Avenue, New Orleans, La. |
| Sternbach, Morris | 40 Exchange Place |

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| Sterne, L. H. | 210 West 110th Street |
| Sterrett, J. E. | 54 William Street |
| Stetson, Francis Lynde | 15 Broad Street |
| Stetson, Will H. | 43 Cedar Street |
| Stettinius, Edward R. | 111 Broadway |
| Steuer, Max D. | 55 West 88th Street |
| Stevens, F. C. | 309 Southern Building, Washington, D. C. |
| Stevens, George W. | 71 Broadway |
| Stevens, Mrs. Joseph S. | Kerby Hill, Jericho, L. I. |
| Stevens, Richard | 1 Newark Street, Hoboken, N. J. |
| Stevens, T. Jefferson | 81 Fulton Street |
| Stevenson, Eugene | 580 Park Avenue |
| Stevenson, L. A. | Concord, Calif. |
| Stewart, Bryce M. | 1600 Barclay Street, Vancouver, B. C. |
| Stewart, John A. | 50 Church Street |
| Stewart, Mrs. Percy H. | 563 West 8th Street, Plainfield, N. J. |
| Stewart, William R. | 31 Nassau Street |
| Stickney, Charles D. | 512 Fifth Avenue |
| Stiger, William D. | 62 William Street |
| Stiger, William E. | 138 West 73d Street |
| Stillman, Charles | 21 West 48th Street |
| Stillman, Leland S. | 15 William Street |
| Stockton, Philip | 17 Court Street, Boston, Mass. |
| Stoddard, John M. | 542 West 112th Street |
| Stokes, Anson Phelps | 100 William Street |
| Stokes, J. G. Phelps | 100 William Street |
| Stone, Harlan F. | 49 Wall Street |
| Stone, I. F. | 100 William Street |
| Storer, Mrs. A. H. | Ridgefield, Conn. |
| Straus, Percy S. | 34th Street and Broadway |
| Straus, Simon W. | Straus Building, Chicago, Ill. |
| Strauss, Albert | 1 William Street |
| Strauss, Charles | 141 Broadway |
| Strauss, Frederick | 1 William Street |
| Strohmeyer, George W. | Milwaukee National Bank, Milwaukee, Wis. |
| Strong, Benjamin, jr. | 7 Wall Street |
| Stroock, S. M. | 30 Broad Street |
| Stubbs, Francis P., jr. | Central Savings Bank Building, Monroe, La. |
| Sturgis, F. K. | 17 East 51st Street |
| Styer, David | Bordentown Military Institute, Bordentown, N. J. |
| Sullivan, J. J. | Central National Bank, Cleveland, O. |
| Suzzallo, Henry, | 525 West 120th Street |
| Swan, George B. | 101½ Front Street, Beaver Dam, Wis. |
| Swan, Mrs. Joseph R. | 1 Lexington Avenue |
| Swan, Robert | 25 Broad Street |
| Swartwout, Richard H. | 44 Pine Street |
| Swayne, Francis B. | 149 Broadway |
| Swayze, Francis J. | 765 High Street, Newark, N. J. |
| Swetland, Mrs. Horace M. | 151 Central Park West |

| | |
|-----------------------------|---|
| Taber, E. J. L. | Elko, Nevada |
| Taft, Henry W. | 36 West 48th Street |
| Taggart, Rush | 319 West 75th Street |
| Taintor, Charles N. | 41 West 76th Street |
| Takamine, Jokichi | 550 West 173d Street |
| Talbert, Joseph T. | 55 Wall Street |
| Tallmadge, Josiah C. | 14 Liberty Street, Catskill, N. Y. |
| Talmage, Mrs. Edward H. | 925 Park Avenue |
| Tappan, Mrs. J. B. C. | Glen Cove, L. I. |
| Taylor, Carl | 24 Broad Street |
| Taylor, Frederick C. | Stamford, Conn. |
| Taylor, George | 8 West 126th Street |
| Taylor, Henry R. | 30 Pine Street |
| Taylor, Samuel M. | 195 Broadway |
| Taylor, William H. | 1815 Whitehall Building, 17 Battery Place |
| Teele, Arthur W. | 30 Broad Street |
| Teets, Herbert M. | 530 Fifth Avenue |
| Tefft, Erastus T. | 5 Nassau Street |
| Tenney, Levi S. | 27 William Street |
| Terhune, N. | 32 Nassau Street |
| Terry, Charles Thaddeus | 100 Broadway |
| Tesla, Nikola | Waldorf-Astoria Hotel |
| Teter, Lucius | 5637 Woodlawn Avenue, Chicago, Ill. |
| Thacher, Thomas | 62 Cedar Street |
| Thaw, A. Blair | 135 East 66th Street |
| Thitchener, W. H. | 30 Broad Street |
| Thomas, Albert A. | 90 Pearl Street, Middleboro, Mass. |
| Thomas, Allen M. | 35 West 54th Street |
| Thomas, Augustus | New Rochelle, N. Y. |
| Thomas, John W. | 76 William Street |
| Thomen, Otto J. | 33 Pine Street |
| Thompson, Mrs. Charles L. | 156 Fifth Avenue |
| Thompson, Mrs. Frederick F. | 283 Madison Avenue |
| Thompson, Holland | 17 Lexington Avenue |
| Thompson, J. David | Law Library, Columbia University |
| Thompson, William B. | 14 Wall Street |
| Thorley, Charles | 562 Fifth Avenue |
| Thorne, Edwin | West Islip, L. I. |
| Thorne, Jonathan | 43 Cedar Street |
| Thornton, W. D. | 42 Broadway |
| Thurston, Edward Sampson | 1212 S. E. Fifth St., Minneapolis, Minn. |
| Titus, Arthur H. | 55 Wall Street |
| Tobin, R. M. | Hibernia Bank, San Francisco, Calif. |
| Todd, Albert M. | Kalamazoo, Mich. |
| Todd, Ambrose G. | 51 East 58th Street |
| Tokieda, M. | 55 Wall Street |
| Tomlinson, John C. | 35 Wall Street |
| Tompkins, Leslie J. | 32 Waverly Place |
| Topakyan, H. H. | 225 Fifth Avenue |

| | |
|------------------------------|---|
| Toulmin, H. A., jr. | Schwind Building, Dayton, O. |
| Towne, Henry R. | 121 Madison Avenue |
| Townsend, James M. | 165 Broadway |
| Trube, Miss Jessie Maud | "Bella Sylva," Hastings-on-Hudson, N. Y. |
| Trull, Mrs. William C. | 20 Fifth Avenue |
| Truman, Henry H. | 56 Highland Avenue, Orange, N. J. |
| Trumbull, Frank | 71 Broadway |
| Tucker, H. St. George | Lexington, Va. |
| Tuckerman, Alfred | University Club |
| Tupper, G. W. | 74 Pleasant Street, Brookline, Mass. |
| Turnbull, Arthur | 38 Wall Street |
| Turner, William L. | 84 Cotton Exchange Building |
| Turnure, George E. | 64 Wall Street |
| Turrell, Edgar A. | 76 William Street |
| Tweed, Miss Katherine W. | 12 East 36th Street |
| Twitchell, H. K. | 270 Broadway |
| Tyler, William S. | 30 Church Street |
| Ullman, Joseph | 160 Broadway |
| Underhill, Francis Jay | 2131 Broadway |
| Urban, George, jr. | Pine Ridge, Buffalo, N. Y. |
| Van Amringe, Guy | 31 Nassau Street |
| Van Beuren, F. T. | 65 Fifth Avenue |
| Van Beuren, Michael M. | 7 Wall Street |
| Van Cortlandt, R. B. | 30 Pine Street |
| Vanden Berg, F. | 32 Nassau Street |
| Vanderlip, Frank A. | 55 Wall Street |
| Van Ingen, Philip | 125 East 71st Street |
| Van Vorst, Mrs. Frederick B. | 11 Euclid Avenue, Hackensack, N. J. |
| Van Wagenen, Bleecker | 443 Fourth Avenue |
| Vernier, Chester G. | University of Illinois, Urbana, Ill. |
| Ver Planck, William Gordon | 149 Broadway |
| Vezin, Charles | 409 Palisade Avenue, Yonkers, N. Y. |
| Victor, Royall | 10 West 61st Street |
| Villard, Mrs. Henry | 145 West 58th Street |
| Villard, Oswald Garrison | 20 Vesey Street |
| Vitale, Ferruccio | 1133 Broadway |
| von Mayhoff, Mrs. Carl | 59 East 34th Street |
| Voorhees, John H. | Sioux Falls, So. Dak. |
| Voorhees, Stephen H. | 68 William Street |
| Voorhees W. P. | 35 Union Street, New Brunswick, N. J. |
| Wacker, Charles H. | 134 La Salle Street, Chicago, Ill. |
| Wade, G. K. B. | 155 East 72d Street |
| Wade, William O. | 1241 First National Bank Building, Chicago, Ill. |
| Wagner, Edward E. | 416 Western National Bank Building, Mitchell, S. D. |
| Walbridge, H. D. | 7 Wall Street |
| Walker, Roberts | 115 Broadway |
| Walker, William Hall | 23 West 54th Street |
| Wallace, James U. | 54 Wall Street |
| Walter, W. J. | 52 Broadway |

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|---------------------------------|---|
| Warburg, Felix M. | 52 William Street |
| Warburg, Paul M. | 52 William Street |
| Ward, Owen | 208 Fifth Avenue |
| Wardrop, Robert | People's National Bank, Pittsburgh, Pa. |
| Wardwell, Allen | 15 Broad Street |
| Warfield, F. P. | 2 Rector Street |
| Warren, Charles H. | 34 Nassau Street |
| Warren, Lloyd | 3 East 33d Street |
| Warren, Mrs. Schuyler N. | 311 Lexington Avenue |
| Washington, William De Hertburn | 267 Fifth Avenue |
| Waterbury, John I. | 14 Wall Street |
| Watson, C. W. | 500 Madison Avenue |
| Watson, Frank D. | Hartley Hall, Columbia University |
| Watson, John J., jr. | 390 West End Avenue |
| Webb, George T. | Ellendale, N. Dak. |
| Webb, Silas D. | 32 Burling Slip |
| Weber, A. F. | 464 Elm Street, Richmond Hill, N. Y. |
| Webster, Frank G. | P. O. Box 7, Boston, Mass. |
| Weeks, W. Holden | 789 Madison Avenue |
| Weil, Edward A. | 70 Gold Street |
| Weinstein, Edward M. | Public Bank, Delancy & Ludlow Streets |
| Weitling, William W. | College Point, N. Y. |
| Welch, S. C. | Waynesville, N. C. |
| Welling, Richard | 2 Wall Street |
| Welwood, John C. | 320 Central Park West |
| Westcott, Clarence L. | 100 Broadway |
| Westinghouse, George | Pittsburgh, Pa. |
| Weyl, Walter E. | 175 Second Avenue |
| Wheat, Alfred A. | 32 Nassau Street |
| Wheeler, Everett P. | 735 Park Avenue |
| Whinery, C. C. | 35 West 32d Street |
| Whitaker, Edward G. | 45 Broadway |
| White, Andrew D. | Ithaca, N. Y. |
| White, Archibald S. | Fourth & Plum Streets, Cincinnati, O. |
| White, Horace | 18 West 69th Street |
| White, John B. | Long Building, Kansas City, Mo. |
| White, Leonard D. | 52 Broadway |
| White, Miss Mary Langdon | 105 East 22d Street |
| Whitin, E. Stagg | Columbia University |
| Whitin, Frederick H. | 501 West 113th Street |
| Whitlock, Victor E. | 32 Nassau Street |
| Whitman, Malcolm D. | 115 East 60th Street |
| Whitridge, F. W. | 59 Wall Street |
| Whitten, Robert H. | 684 East 21st Street, Brooklyn, N. Y. |
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JUDICIAL INTERPRETATION OF CONSTITUTIONAL PROVISIONS¹

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WHEN the constitution of the United States was adopted at the end of the eighteenth century, the conditions to which it was intended to apply were marked by three distinguishing characteristics. The first was geographical in its nature; the second was economic; the third intellectual. In the first place, the United States for which the constitution was framed, consisted of a series of communities, lying along the Atlantic seaboard of North America, largely engaged in agricultural pursuits and occupying sparsely populated districts which as compared with their population were richly endowed with natural resources. These communities were in the main connected one with another only by the sea and by the rivers and estuaries which in many instances penetrated far into the interior. Their social conditions were as diverse as their geographical condition was isolated. In some slave labor, in others free labor was the rule. In some one racial element or one religious confession was most pronounced; in others another. Their comparative geographical isolation and their difference in economic and social conditions naturally had the effect of causing the states, as these communities had come to be called, to regard the maintenance of a large degree of local independence as of the greatest importance.

In the second place, the economic conditions of the time were comparatively simple. Even the countries of Western Europe which were most advanced from an industrial point of view were only just beginning to make use of the factory system in their industrial organization. The hand tool had not as yet generally given place to steam-driven machinery. The

¹ Read at the meeting of the Academy of Political Science, Oct. 26, 1912.

industrial worker in most instances still followed his livelihood within the narrow confines of his own dwelling and regulated the hours of his labor by his desires or necessities. The steam locomotive was just about taking shape in the imaginative minds of such men as George Stephenson. The only means of telegraphing was to be found in the beacon, the heliograph and the semaphore. No human being had even dreamed of the telephone. Such slight change in European industrial conditions as was due to power machinery and the building of factories had not taken place in North America, which as has been said was predominantly agricultural in character.

Finally, the philosophy of the time was based upon the conception that society was static rather than dynamic or progressive in character. Belief in verities eternal and absolute under all conditions was almost universal among educated men. Nowhere was this confidence in absolute and eternal truth more marked than in the domain of political thought. The various utopias which had been outlined by political theorists and philosophical dreamers had held before the mind of man a goal which he should strive to attain. An ideal state was pictured in which, if it were once reached, humanity would cease from striving and finally at rest would contemplate with complacency the hardships of the past and anticipate with satisfaction the joys of the future. It is of course true that political philosophers had not at the end of the eighteenth century, any more than at any other time in the history of man, reached a complete agreement as to the concrete measures whose adoption was necessary for the realization of the perfect state of which all had their visions. It is also true that the concrete measures which were recommended were frequently, if not always, evidently devised in view of the peculiar evils which each such prophet sought to remedy. At the same time while the political doctors disagreed somewhat as to the proper medicine, they all believed that some medicine would be permanently efficacious, and few, if any, of them imagined that the patient would by mere development so change as to make changes of treatment necessary. The proper treatment once discovered was to be continued for all time and would be followed by the desired results.

Under the influence of this static conception of society the political philosophers and lawgivers of the end of the eighteenth century had accepted as a fundamental and everlasting political theory the idea that the state was based upon a compact entered into between governors and governed. The governed—*i. e.*, the mass of mankind—were considered to have reserved at the time of making this compact, certain rights which were often spoken of as natural rights and of which they might not be deprived. This doctrine of natural rights had for its corollary the recognition of a wide sphere of individual liberty which should be unregulated by government action. This corollary ultimately came to be known as the principle of *laissez faire*.

It was in these conditions and under the influence of these ideas that the constitution of the United States was adopted. This instrument was framed for communities geographically isolated, socially diverse, living a most simple life and in a comparatively low stage of economical development. It was intended to realize through actual application the idea of a social compact, the theory of natural rights and the *laissez-faire* policy. It was based finally upon the fundamental proposition that man could by searching find out and apply absolute and eternal political truth.

The geographical isolation and social diversity of the states led to the laying of great emphasis in the constitution of the United States upon the necessity of preserving for all time the same degree of state sovereignty and independence as was recognized to exist in the latter part of the eighteenth century. Each state was secured beyond the possibility of change equal representation in the Senate while its consent was made necessary to its division or its union with other states. No serious attempt was made to secure uniformity of law, and subject to the necessity of maintaining a republican form of government, each state was left to arrange its internal organization as it saw fit. Indeed, important matters affecting all the states were left to the determination of each state, such as suffrage and the method of choosing presidential electors.

The social-compact, natural-rights and *laissez-faire* theories found their expression in the enumeration of governmental

powers, the reservation to the people of all powers not granted to the government, certain express denials of powers of government action and the formulation of a series of individual rights which the government was not permitted to infringe.

Finally, the confidence of the fathers in the existence of eternal political verities and the possibility that fallible humanity might ascertain and formulate them is seen in the difficulty if not impossibility of amending the constitution which resulted from the processes of amendment provided. For as Dicey says :

The sovereign of the United States has been roused to serious action but once during the course of ninety years. It needed the thunder of the civil war to break his repose and it may be doubted whether anything short of impending revolution will ever again rouse him into activity.

If we compare with the conditions which existed at the time the constitution was adopted those in which we are now living, what a contrast at once presents itself ! The industrial revolution by which the last century and a half of Western European development has been characterized has changed the face of most civilized countries. Power machinery with its attendant factory system has so modified productive processes that in almost all highly developed countries classes of industrial workers have arisen which in numbers and in minute differentiation of occupation surpass anything the world's history has hitherto exhibited. Improved methods of transportation have so facilitated intercourse and so enlarged the sphere of man's activity that what were once regarded as insurmountable obstacles to communication are no longer so considered, and what once seemed to be natural political boundaries have lost their significance.

In other words, classes have developed whose relations cannot be defined in accordance with the rubrics of a once almost universally accepted legal lore and centralization is necessary if the political system is to be in accord with recognized economic facts. Just as once the privilege of the baron fell before the rights of the merchant, and local law gave way to national law, so at the present time the rights of labor are being em-

phasized at the expense of the employer and a political organization based on more or less local isolation is being forced to succumb to the needs of an economic system founded upon more general intercommunication.

This development has not failed to exercise an effect on the United States. The improvement in the means of transportation has, for example, been most marked on this side of the water. The digging of waterways, the building of railways, and the spread of the telegraph and telephone have caused the geographical isolation of the once separated states to disappear. The development of American industry and commerce, notwithstanding the acquisition of the fertile fields of the West and the attendant agricultural development, has caused the former overwhelmingly predominant rural character of the population to disappear. The gradual spread of the English language has brought about an almost complete unity of speech while the greatly diminished influence of religious differences taken together with the complete separation of church and state has prevented the centrifugal force of creeds from making itself felt.

Finally it is to be noticed that the intellectual attitude of what are usually considered the more intelligent classes is quite different from that which was noticeable in the latter part of the eighteenth century. The formulation of the evolutionary theory of development in the world of science has not failed to have its influence on political thought. Students of politics are coming more and more to the conviction that a static society is impossible and that absolute political theories are incapable of application in the changing conditions which have become so noticeable since scientific methods have been applied to the conduct of life. More and more political thinkers and social students are recognizing that a policy of intelligent opportunism is the policy most likely to be followed by desirable results and that adherence to general theories which are to be applied at all times and under all conditions is productive of harm rather than good.

This common attitude of skepticism with regard to the desirability of attempting to postulate fundamental political prin-

ciples of universal application has naturally caused questions to be raised as to the applicability under present conditions of the two great theories so commonly accepted at the end of the eighteenth century, *vis.*, the theories of the social compact and of natural rights. Furthermore, the discovery that through the application of scientific methods man has a much greater influence over his environment than was formerly regarded as possible has opened the way to so many apparently effective methods of governmental regulation that a serious blow has been dealt to the *laissez-faire* theory.

The question which has been chosen for discussion this morning is: Can a practically unamendable constitution, adopted in the conditions and under the influences of the political thought prevailing at the end of the eighteenth century, be adapted by judicial interpretation to the needs and thought of the twentieth century without causing us to lose the advantages which are commonly regarded as attached to a written constitution? Before the attempt is made to answer this question attention must be called to two things.

In the first place, it is now an accepted doctrine of American constitutional law that it is both the right and the duty of the courts to declare in cases which come before them in the ordinary exercise of their jurisdiction that any act of the legislature is unconstitutional which clearly violates a provision of the constitution. It would be unprofitable for us to enter upon the discussion of the question which has recently been made the subject of considerable debate, whether the courts in exercising this power have been guilty or not of usurpation. However this may be, it is difficult to imagine that the federal courts at this day will relinquish the exercise of a power whose existence has been recognized so long, except as the result of some sort of personal pressure brought to bear upon the judges which will diminish greatly the independence they now enjoy. It is commonly believed that the judges of the United States courts may constitutionally be removed only through the process of impeachment, which as provided for in the constitution is not a method of removal adapted for use in influencing judicial decisions on constitutional questions. The constitution, however,

has no word to say as to the impeachment of judges as judges. It is only as civil officers of the United States that they have been made subject to this process of removal from office. The constitution does, however, contain a specific and express provision with regard to the tenure of judges. It says that they shall hold their office during good behavior. It does not define good behavior nor does it provide a method, outside of the method of impeachment applicable to all civil officers, for determining when a judge is guilty of misbehavior. It has been claimed more than once in Congress that it is within the power of the legislative authority of the United States by law to define what is misbehavior and to provide a method by which misbehavior may be ascertained which is less cumbersome than the present method of impeachment. Until such action is taken, it is naturally impossible to say what would be the decision of the Supreme Court as to its propriety. If, however, such action were regarded as constitutional it would be possible for Congress through the exercise of a power of removal similar to that now possessed by the legislature of Massachusetts over the judges of that state to bring a pressure to bear upon the judges of the federal courts which would have an important influence on the judicial interpretation of the constitution.

In the second place, it is to be noted that the doctrines of the social compact and of natural rights while regarded as truths were not actually made a part of our constitutional law except in so far as specific rights conceived of as natural rights were incorporated into the constitution and were thus accorded judicial protection. At the same time the tendency of our courts has been to read into such general provisions as that preventing the government from depriving a person of life, liberty, or property without due process of law, quite a number of natural-rights ideas, and to endeavor, in their efforts to deny the right of the government to exercise particular powers, to obtain aid and comfort from the theory of *laissez faire*. A good example of such action is to be found in an opinion of the supreme court of Missouri which said in declaring unconstitutional a law levying a progressive inheritance tax to provide scholarships for indigent students at the state university :

Paternalism, whether state or federal, as the derivation of the term implies, is an assumption by the government of a quasi-fatherly relation to the citizen and his family, involving excessive governmental regulation of the private affairs and business methods and interests of the people, upon the theory that the people are incapable of managing their own affairs, and is pernicious in its tendencies. In a word, it minimizes the citizen and maximizes the government. Our federal and state governments are founded upon a principle wholly antagonistic to such a doctrine. Our fathers believed the people of these free and independent states were capable of self-government; a system in which the people are the sovereigns and the government their creature to carry out their commands. Such a government is founded on the willingness and right of the people to take care of their own affairs and an indisposition to look to the government for everything. The citizen is the unit. It is his province to support the government and not the government's to support him. Under self-government we have advanced in all the elements of a great people more rapidly than any nation that has ever existed upon the earth, and there is greater need now than ever before in our history of adhering to it. Paternalism is a plant which should receive no nourishment upon the soil of Missouri.

In a way, therefore, it may be said that the political thought prevalent at the end of the eighteenth century has been read into our constitution by the courts. But unless we consider the doctrine of *stare decisis* just as controlling in constitutional as in other cases it may not be said of our constitutions and particularly of the United States constitution that they adopted as a permanent guide for future action any of the theories which have been mentioned. It is only because of judicial interpretation that they have legal force. By a further process of judicial interpretation they may lose their authority.

So far as concerns the effect of the *laissez-faire* theory on the judicial interpretation of the constitution, even the application of the doctrine of *stare decisis* to constitutional cases will not interfere with a considerable enlargement of the powers of the federal government. In a number of instances, among which the attempted exercise of the power to regulate commerce is perhaps the most marked, the federal courts through the denial of the propriety of the exercise of state powers laid the basis for the exercise of federal power. However they

may have been influenced in their decisions by the *laissez-faire* theory, their actual decisions recognized the existence of federal power. For state power was denied because the power attempted to be exercised had been conferred by the constitution upon the federal government. When in the course of our economic development it came to be believed that Congress should take positive action, the decisions denying state power were thus at the same time precedents in favor of the propriety of federal action. On the other hand, not all the decisions recognizing that state action was proper may be regarded as precedents in favor of the proposition that Congress is without jurisdiction. For through the adoption of the rule that state action is in many cases proper only because the federal government has not acted, the question as to the propriety of federal action is left open for determination, to be influenced if not controlled by the conditions existing at the time the determination is made.

In the discussion of the possibility by judicial interpretation of adapting the constitution to changing economic and social needs we must then remember: first, that it has not been as yet determined how much pressure may constitutionally be brought by Congress upon the federal judiciary to interpret the constitution in the way desired by Congress; and second, that our constitution has been made by past judicial interpretation to take on a meaning which is not necessarily the only meaning which may be given to it. Finally, attention should be called to the fact that the present interpretation which is popularly given to the constitution is in many cases a political rather than a judicial interpretation. Political parties as well as courts have been influenced by the political and economic theories of the eighteenth and early nineteenth centuries. Under their influence Congress has not even considered the question whether it may exercise powers which a careful study of the constitution might reveal that Congress possessed. An historical tradition with regard to the constitution has sprung up which finds its basis in political expediency rather than in constitutional power. For example, Congress has only just begun to exercise its power to regulate commerce among the

several states. What the limits of that power are no one can with safety say, but that they transcend those assigned to that power by the accepted political interpretation would be denied by few who have made a careful study of the constitution itself. Now this political interpretation of the constitution may easily change. It is not in any way influenced by the doctrine of *stare decisis*. For Congress is not bound by the decisions of its predecessors even on constitutional questions.

If, however, we leave out of consideration the possibility that Congress may diminish the independence of the federal judiciary, if we put out of our minds the expectation that the courts will adopt any new method of constitutional interpretation, and if we confine ourselves to the consideration of the present judicial interpretation of the constitution, how shall we answer the question? In other words, are the courts through their powers of interpretation at the present time adapting the constitution to changing economic and social conditions?

To answer this question adequately would of necessity involve an exhaustive examination of almost our entire constitutional law from the point of view of its historical development. Such an examination would, however, be both impossible and out of place on this occasion. Resort to some other less thorough and less satisfactory method is thus unavoidable. It might be suggested that citations from opinions might be made which would show the attitude of the Supreme Court with regard to the constitution. But any citations which might be made as indicative of the attitude of the court, in addition to lacking the authority of judicial decision, might be met by other citations taking the opposite point of view. For in the century and a quarter of its history the Supreme Court has been subject to a variety of influences and has inevitably expressed conflicting opinions.

The only method which is applicable on this occasion would seem to be to consider certain important lines of decisions in the hope of finding from a consideration of the law developed by them an answer to the question which has been propounded.

Let us take in the first place the decisions which have dealt with the powers of the federal government and particularly

those having to do with navigation and commerce. The constitution does not treat of navigation apart from commerce except in so far as it confers admiralty and maritime jurisdiction upon the federal courts. In the early days when local differentiation made state independence more important than at present—for state lines now bear little relation to our economic system—the court was inclined to distinguish intrastate from interstate navigation, and to recognize a very narrow admiralty jurisdiction based upon British precedents. At the present time, however, the distinction between a navigation subject to state and one subject to federal regulation has practically ceased to exist, and an admiralty jurisdiction suited to the geographical conditions of the North American continent has been developed out of that which originated in such different conditions as were presented by Great Britain.

The way in which this result was reached is interesting as evidencing the methods of judicial interpretation through whose application the constitution has in this particular been adapted to new social and economic conditions. Originally the Supreme Court was of the opinion that the admiralty and maritime jurisdiction intended to be conferred upon the federal courts was geographically limited to waters affected by the ebb and flow of the tide. The case which laid down this rule was decided at a time when navigation on the Great Lakes and western rivers had not developed to an important extent. Later on Congress by statute extended the jurisdiction to the Great Lakes and the Supreme Court declared the statute constitutional. Still later the Supreme Court without any action by Congress extended the admiralty jurisdiction to all the important western rivers and finally based on the admiralty clause, which merely gives power to the courts, the power of Congress to regulate the operations of all vessels on navigable waters regardless of the fact that they may not be engaged in commerce.

Somewhat similar has been the judicial interpretation of the constitutional power of Congress to regulate commerce on land. While the Supreme Court has based the power of Congress to regulate navigation in large degree on a clause in the constitu-

tion which merely gave the courts the power to fix the substantive law of admiralty, in the case of commerce by land the Supreme Court has based the power of Congress to regulate part at any rate of the substantive law of master and servant upon the power given in the constitution to Congress to regulate commerce among the several states. The safety-appliance and the employer's-liability cases have thus recognized that Congress in cases involving interstate commerce may modify the assumption-of-risk and the contributory-negligence doctrines of the common law.

Another instance of the adaptation by judicial interpretation of the constitution to changing social and economic conditions is to be seen in the lottery and pure-food-law cases which have recognized that Congress through the exercise of its commerce power may take the privilege of engaging in interstate commerce from articles, commerce in which is in the opinion of Congress either productive of immorality or liable to endanger the public health. This result has been reached although it is recognized that Congress is not by the constitution the guardian of either the public morals or the public health.

The Supreme Court has in the second place expressed its belief that such general provisions of the constitution as that contained in the fourteenth amendment prohibiting a state from depriving any person of life, liberty, or property without due process of law, are to be interpreted in view of local conditions. Thus it has been held that, in the conditions existing in New England where manufacturing is of great importance, the power of eminent domain may be used in order to take property for the purposes of a dam used by a private manufacturing company. In the mountainous regions of the West it has been held proper to make use of the same power to take property for the purposes of an aerial railway used only by a private mining company. Finally, in the arid regions of the Pacific States it is regarded as constitutional to make use of both the taxing power and the power of eminent domain to further the irrigation of privately owned lands.

Indeed it may be said in a general way that the judicial interpretation which has already been given to the constitution

has shown itself capable of adapting that instrument to most of the varied geographical conditions which exist in a continent as diversified as is North America and to permit of the most advantageous development of its economic resources.

It is true that as yet the Supreme Court has not through the judicial interpretation of the constitution adapted it so fully to the changes in economic and social conditions which have been due to the industrial revolution of the last one hundred and fifty years. American courts rather generally, and the Supreme Court to a certain but after all on the whole rather small extent, have not been able to divest themselves of the idea that legal liberty is the only liberty which is protected by the constitution and have sometimes forgotten that legal liberty in the absence of economic liberty is a shadow without substance, under which there is little if any protection from the burning heat of economic struggle.

A case in Pennsylvania has thus laid down the proposition that an employer is denied his constitutional right to the pursuit of happiness by a law which requires him to pay his employes once in two weeks. In the volume of the digest in which this case is mentioned the very next case referred is to the effect that one is not denied the right to the pursuit of happiness by a law forbidding the smoking of opium. The immediate juxtaposition of these two cases is interesting as emphasizing the tendency of American courts to recognize that while individual rights are not violated by laws regulating conduct regarded as inconsistent with prevailing ethical views, they are infringed by any attempt to protect the classes weaker in economic power by diminishing their sphere of legal liberty.

It must be admitted, however, that the Supreme Court has not as yet, largely because of a defect in our appellate procedure, been in a position to express itself upon some of the most important phases of the liberty guaranteed to the individual by the constitution. But in most of the cases which have come before it where it was possible to prove that legal liberty must be curtailed in the interest of health and safety its decisions have recognized that under the economic conditions in which we live the liberty which we may have is much less than

would have been recognized a century ago as our due. It may be added also that in a number of cases the Supreme Court has expressed itself in such a way as to show clearly that it is aware that the economic liberty of vast classes of persons at the present time has been so curtailed that the sphere of legal liberty for which the advocates of a *laissez-faire* policy contend must also be seriously curtailed if we are to protect the economically weak from their own really involuntary acts. Thus in the case of sailors the court has held constitutional an act of Congress prohibiting under a penalty any payment of wages in advance, and in the case of miners has upheld state statutes which have regulated the method of paying employes by providing for the cashing of coal orders when presented to their employers, and for the weighing of coal without screening where miners are paid by the weight of coal. In one of these cases the court refers to the necessity of protecting the sailor against his own improvidence, and in another cites with apparent approval from the decision of the state court appealed from where it is said:

The legislature evidently deemed the laborer at some disadvantage under existing laws and customs, and by this act undertook to ameliorate his condition in some measure by enabling him or his *bona fide* transferee, at his election and at a proper time to demand and receive his unpaid wages in money rather than in something less valuable. Its tendency, though slight it may be, is to place the employer and employe on equal ground, and, so far as it accomplishes that end, is commendable.

It is, of course, true that a very few of the decisions of the Supreme Court have been a grievous disappointment to some of the most ardent advocates of social reform, but it is to be remembered that these decisions were usually made by a divided court, that the personnel of the court is seldom the same for a very long period, that its members are appointed by an officer who is being brought day by day closer to the people and finally, that the Supreme Court has been known to reverse its opinions, and is not impervious to criticisms and to public demands.

There would seem therefore to be really no serious danger

that judicial interpretation as seen in the long series of decisions of the Supreme Court is unable to adapt our practically un-amendable constitution to changing economic and social conditions. If this may not be said of all the state courts our remedy is close at hand and may be applied without abandoning the traditions of the past.

If state courts are, because of their adherence to precedent, unable or unwilling to adapt the provisions of state constitutions to changes in economic conditions, we may amend the state constitutions. Whether that is done by the ordinary methods of constitutional amendment or by the method which has come to be spoken of as "the recall of judicial decisions" is quite immaterial from the viewpoint of the question under consideration. If we regard the "recall of judicial decisions" with suspicion and at the same time consider the present method of constitutional amendment as too difficult, too slow, or too cumbersome, it is a comparatively easy matter to adopt an easier, quicker, and more simple method. The various methods of amendment provided by different state constitutions offer us a choice of methods wide enough to suit almost any taste.

If when our state constitutions are so amended as to make it possible for the state courts to bring their decisions into accord with existing economic conditions, those courts still persist in rendering decisions with regard to the constitutionality of state laws from the viewpoint of the constitution of the United States which are not in accord with the decisions of the United States Supreme Court—in other words, if the state courts refuse to recognize the Supreme Court as the final arbiter as to the meaning of the United States constitution—we should urge upon Congress the necessity of passing the bill introduced at its last session providing for an appeal to the Supreme Court from the decisions of the state courts on federal questions as well in cases in which state laws have been held unconstitutional from the point of view of the federal constitution as in those cases in which they have been held constitutional. If that were done, the final judicial interpretation of the United States constitution would in all cases be made by that court which, whether because of the method of appointing its mem-

bers, or because of the wide public experience which most of them have had, or because they come from widely different and differing parts of the country, has shown greater capacity than perhaps any other judicial body to treat the constitution of the United States as an instrument, to use the words of its judges, "made for an undefined and expanding future and for a people gathered and to be gathered from many nations and of many tongues," as an instrument whose "unchanging provisions are adaptable to the infinite variety of the changing conditions of our national life."

(64)

THE AMENDMENT OF THE FEDERAL CONSTITUTION¹

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THE subject of our discussion to-day is the adaptation of written constitutions to changing economic and social conditions. One method of such adaptation, namely, by judicial interpretation of existing provisions, has been treated by the previous speaker. It is my purpose to consider a different method—alteration by the process of formal amendment, in the particular case of the Federal Constitution. I am not, however, concerned with desirable changes in the substantive part of the constitution, but I wish to direct attention to the procedure for making such changes—to the amending clause itself.

When the members of the Federal Convention of 1787 had to consider what provision should be made for remedying defects in their work which they expected time and experience to reveal, there were practically no models or precedents to guide them. The state constitutions offered little that was suggestive. The Articles of Confederation were virtually unamendable, requiring agreement in Congress and confirmation by the legislatures of every state in the Union;² in fact, it was this very condition that made necessary the calling of a convention and the adoption of the new constitution by revolutionary methods.

The delegates to the Federal Convention had, therefore, to find a solution to a new problem and the account of the debates in Madison's journal shows plainly their uncertainty as to the form it should take. Randolph's resolution on this subject,

¹ Read at the meeting of the Academy of Political Science, Oct. 26, 1912.

² Art. xiii. It is interesting to note, however, that Franklin's draft of articles of confederation (1775) required amendments submitted by Congress to be approved by a *majority* of the colony assemblies. Cf. Watson, *Constitution*, pp. 1302-1303.

as adopted, merely expressed the sense of the convention that amendments should be made whenever necessary, the original qualification, "without requiring the consent of the national legislature," having been dropped. We are told, however, that "several members did not see the necessity of the resolution at all."¹ The Pinckney plan provided for the calling of a convention on application of two-thirds of the state legislatures and for the proposal of amendments by Congress on a two-thirds vote in each house, ratification in either case requiring the agreement of two-thirds of the state legislatures.² The committee of detail, to which these two drafts were referred, reported a rather indefinite clause. It merely provided that on the application of the legislatures of two-thirds of the states for an amendment Congress should call a convention for that purpose.³ This was agreed to, but on the motion to reconsider was criticized by Gerry, on the ground that it left the state governments at the mercy of a majority of the convention; by Hamilton, because it was inadequate in not providing for the proposal of amendments by Congress, which he said would be the first to perceive, and would be most sensible to, the necessity for them; by Madison, on the ground of its vagueness. To meet these objections, the amendment offered by Sherman gave Congress the power to propose amendments without any proviso for a two-thirds majority but required the consent of all the states for ratification. As this repeated the mistake made in the Articles of Confederation Wilson of Pennsylvania proposed to cut down the requirement for ratification to two-thirds of the states, but this motion was lost by a vote of six to five. Then a compromise was effected on the present basis of three-fourths. At this stage Madison proposed and Hamilton seconded a substitute clause differing only from that which was finally adopted in providing that the application of two-thirds of the legislatures should be mandatory to Congress for the proposal of amendments instead of for calling a convention, and this was adopted

¹ *Elliot's Debates*, vol. 5, pp. 128, 157, 182.

² *Ibid.* vol. 5, pp. 132.

³ *Ibid.* vol. 5, pp. 381, 498.

by nine to one.¹ In this form it went to the committee on style and arrangement, and was reported with only slight verbal change. In the further discussion the proposed clause was criticized on the ground that the amendatory power was left too exclusively to Congress, and the provision for a convention was accordingly inserted. Subsequent motions to require ratification by all the states, to strike out the alternative provision for ratification by conventions, and to provide for a second general convention were negatived, and the construction of the present unwieldy and cumbersome machinery was complete.²

The few references to this clause in the state conventions which followed, particularly the remarks of Mr. Iredell in North Carolina, show clearly that it was the expectation of the framers that the procedure provided would be found easily workable when the need arose.³ On the contrary it has proved, as is well known, to be an almost insurmountable obstacle in the way of securing either the proposal or the adoption of amendments very widely approved by the people.

The first ten amendments, known as the bill of rights, were rather additions to the constitution than alterations of it. They were really initiated by the state conventions, being practically the conditions precedent to ratification. The operation of the machinery, therefore, presented no difficulty in this case. The time required to make them part of the constitution was one year and eight months from the time of proposal by Congress.⁴

The eleventh amendment, which arose from a difficulty created by a judicial decision (*Chisholm v. Georgia*), was of minor interest, and was not ratified by the necessary number of states until three years and eight months after it was submitted.⁴

The twelfth amendment, providing for a change in the political machinery for the election of president, arising out of the contest between Jefferson and Burr, and being urgent because a new election was approaching, was ratified in ten months.⁵

¹ *Elliot's Debates*, vol. 5, pp. 530-532.

² *Ibid.* pp. 551-553.

³ *Ibid.* vol. 4, p. 176. See also *Federalist*, no. 85.

⁴ Watson, *Constitution*, vol. 2, p. 1311.

⁵ Ames, H. V., *Proposed amendments to the constitution*, *Ann. Rep. Am. Hist. Assoc.*, 1896, vol. 2, p. 79.

Then followed a period of over half a century, during which were introduced upward of four hundred amendments covering a wide field of subjects. Six of these were passed by the requisite two-thirds vote in only one house of Congress; one relating to titles of nobility was submitted to the state legislatures and lacked only the vote of one state of being adopted.¹

It was not, however, until the sixties, when fundamental economic difficulties had to be met, that the real test came and the vital weakness of the constitution in its procedure for amendment was demonstrated. The civil war followed, and after its conclusion the thirteenth, fourteenth and fifteenth amendments, to define the rights of a new body injected into the citizenship of the republic, were added to the constitution by force of the superior power of the victors in the struggle. From that time no suggested amendment was able to secure the necessary two-thirds majority in both houses of Congress until the year 1909, a period of forty years.

Each of the two amendments recently proposed to the state legislatures has peculiar features and has been attended by special circumstances, making its submission to the states finally possible. The income-tax amendment was rendered necessary by a flagrant abuse of the judicial power to review acts of Congress which had been rankling in the public mind for fifteen years and which forbade the establishment of a national system of taxation on a just and equitable basis. As the result of a particular parliamentary situation, a Republican President and majority in both houses of Congress found themselves in agreement with the Democratic minority. It was practically a case of proposing a constitutional amendment by unanimous consent. The amendment has, however, been pending now for three years and three months and still requires ratification by two more states for its adoption.

The proposed amendment for choice of United States Senators by popular vote in each state, submitted this year, had been the subject of numerous resolutions introduced in Congress since 1826 and in some form had secured the requisite two-thirds majority in the House of Representatives in each Congress

¹ Ames, H. V., *Proposed amendments to the constitution*, pp. 19-22.

from the fifty-second.¹ A large majority of the state legislatures had repeatedly adopted resolutions recommending this amendment. These were finally taking the form of applications for a convention to propose amendments, and were rapidly approaching the number of two-thirds of the states which would have required Congress to call such a convention. Furthermore, the present constitutional method, which has led to prolonged deadlocks, to the corruption of legislatures, and to the election of men subservient to special interests, had been largely set aside in many states through direct-primary laws, particularly where the Oregon system had been adopted. This growing pressure of public demand for a more democratic method finally reduced the opposing minority in the Senate, the body directly affected, to such a point that further resistance was ineffectual.

Such, in brief, is the history of this ponderous piece of constitutional machinery difficult to set in motion and slow and uncertain in its operation, fully justifying its vigorous condemnation by eminent publicists at home and abroad. Certain other serious objections to it are based (1) on the very unequal weight which it gives to public opinion in different parts of the country, and (2) on the preponderating influence given to the state governments as against the people.

Under the first of these heads, without going into any elaborate statistical analysis, it is sufficient to point out that, according to the last census, the population of the state of New York is greater than that of the eighteen smallest states, yet in finally determining constitutional issues the vote of each of the latter has equal weight with that of New York. Or in the extreme case of the largest and smallest of the states, in point of population, we find that public opinion in Nevada on any amendment submitted for ratification has a weight more than 100 times as great per capita as public opinion in this state. Furthermore, the legislatures of the Pacific and mountain states, with those of two adjacent states, comprising not more than 10 % of the population in all, have the power to block a change in

¹ The proposition was made in the Federal Convention, but received the support of only one state, *viz.*, Pennsylvania. *Elliot's Debates*, vol. 5, pp. 138, 167-170.

the constitution desired by all the other states in the East, South and Middle West, representing 90 % of the population. The undue influence of the states as states, regardless of their population, is also shown in the arrangement by which the states, indirectly through their equal representation in the Senate and directly as units in the ratification process, are consulted twice in the course of the amending procedure, whereas the people of the states are consulted only once, and indirectly, through their representation in the lower house of Congress on the basis of population. This predominance of state influence is a survival from the old Articles of Confederation and is really at variance with the idea of the sovereignty of the people of the United States expressed in the preamble of the constitution.

In looking for suggestions for a better method of amendment and one more in accord with modern democratic ideas, we naturally turn in the first place to a consideration of the experience of the several states of the Union and the modifications that have been made in their constitutions during the last century and a quarter.¹ This shows that, in contrast with the Federal Constitution, the various state constitutions have in the course of time become more easily adjustable to changing conditions and closer approximations to the will of the people through alteration of their amending clauses:

(1) to make the submission of amendments less difficult, by providing for their proposal in one or more of the following ways: (a) by the action of one legislature instead of two successive legislatures; (b) by the ordinary legislative majority instead of by a special majority (*e. g.*, two-thirds); and (c) by initiative petition of a certain percentage of the voters.

(2) to provide for ratification by direct vote of the electors, a method which now prevails in every state except Delaware.

As any amendment of the present procedure for the alteration of the federal constitution will have to receive the approval of three-fourths of the state legislatures for its adoption, it is clear that such a proposal must be in conformity with the ideas

¹ A full discussion may be found in Dodd, W. F., *Revision and amendment of state constitutions*, pp. 118 ff.

which have come to prevail in the several states regarding constitutional changes and with the methods they have become accustomed to employ to effect them.¹

We have, however, to remember that we are dealing with the organic law of a federal government as distinguished from that of a single state. It is, therefore, desirable to inquire into the experience of foreign countries which have had to face the problem of framing a federal constitution. Fortunately there are two such countries in which instructive models are available for our investigation, namely, Switzerland and the Commonwealth of Australia. Each of these had the advantage of being able to study American experience, both federal and state, with regard to the process of amendment.

Under the Swiss system, originally adopted in 1848 and modified in 1874 and again in 1891, amendments may be proposed either by the ordinary legislative process or by initiative petition of 50,000 voters in the form of general suggestions or of completed bills. General suggestions are elaborated by the Federal Assembly on its agreement thereto or after the question has first been submitted to the people. In the case of completed bills, the Federal Assembly may submit with them alternative proposals which it recommends. Total revision may be undertaken by the Federal Assembly at any time when both councils are in agreement; but in case of disagreement, or when 50,000 Swiss voters demand such revision, the question is submitted first to a popular vote and if a majority of the citizens who vote pronounce in the affirmative, a new Federal Assembly is elected for this purpose. Proposed changes when formulated are submitted to referendum vote and take effect when adopted

¹ A test of opinion in Congress on this matter was recently afforded in connection with the admission of New Mexico and Arizona to statehood. By the joint resolution of Aug. 21, 1911, New Mexico was required, as a condition precedent to admission, to alter the amending clause of its proposed constitution (61st Cong., 3d sess., house doc. 1369, p. 38) so as to reduce the requirement for the vote of the legislature in proposing amendments from two-thirds to a majority of the members of each house and for ratification, to substitute a majority of those voting on the proposition in place of a majority constituting an affirmative vote equal to at least 40 per cent of the votes cast at the election and approval by at least half the counties of the state.

by the majority of Swiss citizens voting thereon and by a majority of the cantons.¹

Next, let us consider the amending clause of the Australian constitution which went into effect in 1901. Though formally enacted by the Imperial Parliament,² this important instrument was the result of the deliberations of two conventions of delegates from the separate colonies, of which the first met in 1891 and the second held its sessions over a period of three years, 1897 to 1899. The reports of the debates in these conventions are documents of exceptional importance for the study of our own constitutional problems, not only because we see in them a kindred people with similar traditions grappling afresh with the same questions, but also because American experience is constantly referred to and carefully weighed and analyzed.

The draft of the bill adopted by the 1891 convention³ provided that any law for the alteration of the constitution must be passed by an absolute majority of both houses and be referred to conventions in the several states and for adoption, to be submitted to the Governor-General for the Queen's assent, required approval by the conventions of a majority of the states, subject to the condition that the people of these states were also a majority of the people of the commonwealth. The draft of this clause adopted by the second convention eight years later, which became the final form, shows two significant changes—one making the initiation of amendments easier, the other substituting a popular referendum for ratification by conventions.⁴ The requirement for proposal of amendments became an absolute majority in each house or, in case of disagreement, an absolute majority in one house given twice, the second time after

¹ Swiss Federal Constitution, Arts. 118-123. A full account of the history of this procedure is given in Borgeaud's *Adoption and amendment of constitutions in Europe and America* (tr. by C. D. Hazen, N. Y., 1895) pp. 291-332.

² Commonwealth of Australia Constitution Act, 63 & 64 Vict. ch. 12.

³ National Australasian Convention, Sydney, 1891, *Official record of the proceedings and debates*, p. clxxxviii; debated, pp. 428-434.

⁴ National Australasian Convention, Adelaide, 1897, *Official report of the debates*, pp. 1020-1030, 1204-1209; Australasian Federal Convention, Melbourne, 1898, *Official record of the debates* (third session), vol. 1, pp. 715-772.

three months' interval, plus submission on both occasions to the other house. Every such law is then to be submitted (after two but before six months) to the voters of every state, requiring for adoption the approval of the people in a majority of states and of a majority of the people voting over the whole Commonwealth.

It must be remembered, however, in endeavoring to adapt such a procedure to our own circumstances, that in Australia there exist two safeguards which are wanting here, namely responsible government and the power of disallowance which may be exercised by the British government in case of need.

The last stage of our inquiry is to consider the modifications of article 5 that have been proposed. We have seen that the Articles of Confederation did not specify any special majority in Congress for the proposal of amendments and that the provision for a two-thirds vote was not formulated until a late stage in the proceedings of the Federal Convention when Madison and Hamilton presented their substitute clause; also, that the motion to make two-thirds of the states the number necessary and sufficient for ratification was lost by only one vote. After the adoption of the constitution, however, no suggestion for facilitating the amending process was presented to Congress until January, 1861, when an effort was made to submit the "Crittenden Compromise" to a direct vote of the people. Such a plebiscite would have been advisory only but it is interesting to note that such a proposal was made at this time of great stress when the machinery provided in the constitution proved unworkable. A similar proposition was also offered when the fifteenth amendment was under consideration.

The first actual proposal to establish an easier method of amendment was, however, contained in the original draft of the resolution for the abolition of slavery, as introduced by Senator Henderson of Missouri in January, 1864, a substitute for which ultimately became the thirteenth amendment. The clause, which was dropped in committee, provided that whenever a majority of the members elected to each house, or a convention called on the application of the legislatures of a majority of the several states, should propose amendments, these in either case

should be valid when ratified by the legislatures of or conventions in two-thirds of the several states, as Congress should direct. The next resolution for a new amending clause was introduced in 1873 by Mr. Porter of Virginia. It provided that Congress, whenever three-fifths of both houses deem it necessary, may propose amendments to the constitution, or may call a convention for proposing amendments and revising the constitution, and shall be required to call such a convention on the application of the legislatures of any number of states, embracing three-fifths of the enumerated population of the several states. Amendments proposed by either of these methods were to be valid when approved and ratified by a majority of the electors in the several states voting thereon, and qualified to vote for Representatives in Congress.¹

Of later proposals three are of special interest. Professor J. W. Burgess in his *Political Science and Comparative Constitutional Law*² (1893) suggested the following procedure for amendment of the Federal Constitution: proposal of amendments in two successive Congresses by the two houses in joint session and by simple majority vote; submission to the state legislatures for ratification by the houses thereof, also acting in joint assembly and resolving by simple majority vote; in counting the votes of the legislatures each state should have the same weight as is given to it in the electoral college and an absolute majority of all the votes to which all the states were entitled should be necessary and sufficient for ratification.

Professor Munroe Smith in his recent discussion of this subject³ has pointed out that we have to consider not only what more workable method of amendment seems best adapted to our dual system of government but also what changes in the amending clause would probably stand the best chance of securing the assent of three-fourths of the states. He, therefore, suggests as objections to the Burgess plan that, on the one hand,

¹ Ames, H. V. *Proposed amendments to the constitution*, pp. 292-293.

² Vol. I, p. 152.

³ "Shall we make our constitution flexible?" in *North American Review*, vol. 194, pp. 657-673 (Nov. 1911).

it would be felt that if weighted at all the votes of the states should be according to population and, on the other hand, that the smaller states would demand equality with the larger and would not approve the provision for a joint assembly of Congress, as this would destroy the influence of the equal representation of the states in the Senate. To meet these difficulties he would substitute as the provisions of a new amending clause

“proposal of amendments by the majority vote of both houses in two successive Congresses ; submission of such proposals to the legislatures of the several states or to conventions in the several states or directly to the voters in each of the states, as one or another of these modes of ratification may be proposed by Congress ; and ratification of proposals by a majority of the states, provided that the ratifying states contain, according to the last preceding enumeration, a majority of the total population of all the states.”

This plan is better in every way than any previous proposal and would go a long way towards providing an efficient amending procedure. As, however, the proposal of constitutional amendments by repeated vote in two successive legislatures has been largely abandoned in the case of the state constitutions in favor of action by a single legislature or other methods, it does not seem necessary or desirable to introduce it at this date into the amending clause of the Federal Constitution without good and sufficient cause. The reason assigned in this case is that it would lead to proposals of superior precision being submitted for ratification. But it seems probable that this result could be attained more directly and effectively by the establishment of the proposed legislative drafting bureau for Congress. In cases of disagreement between the two houses of Congress on a matter of constitutional change it might well be provided that amendments could be proposed by majority vote of *one* house in two successive Congresses, as an alternative to proposal by majority vote of both houses in one Congress.

With regard to the ratification process it may be remarked that the object of this is to take the sense of the sovereign people on the amendments submitted. The interposition of representative bodies, either the ordinary legislatures or conventions

elected *ad hoc*, without power to amend the proposals but merely authorized to ratify or reject them, is little more than an indirect and unsatisfactory method of counting the votes for and against. In competition with the method of the direct vote of the electors which the people are accustomed to use in amending state constitutions, it is more than probable that ratification by the state legislatures or by conventions would go to the wall, just as the convention method, though theoretically the better way, has never been chosen by Congress in submitting amendments on account of the greater practical advantages of ratification by the state legislatures. Furthermore, the plan makes no provision for the proposal of amendments on the initiative of the states. In view of the fact that the state governments are becoming laboratories for trying out political inventions, it is to be expected that some important devices for a better system of government, including particularly methods of regulating industry and commerce, will be discovered in them. It is important that the new machinery for the proposal of amendments should provide a means of presenting these for general adoption throughout the country.

All of these specifications for a new amending clause are met in the joint resolution introduced into Congress by Senator LaFollette towards the close of the last session, which presents the following:

Article XVIII. The Congress, whenever an absolute majority of both houses shall deem it necessary, or on application of ten states by resolution adopted in each by the legislature thereof or by a majority of the electors voting thereon, shall propose amendments to this constitution to be submitted in each of the several states to the electors qualified to vote for the election of Representatives, and the vote shall be taken at the next ensuing election of Representatives in such manner as the Congress prescribes. And if in a majority of the states a majority of the electors voting approve the proposed amendments, and if a majority of all the electors voting also approve the proposed amendments, they shall be valid, to all intents and purposes, as part of this constitution.

This proposal, it will be seen, embodies and adapts the prin-

ciples that have been tested both in the several states and in the foreign countries which have been considered. One objection will perhaps be made to it, namely, that it does not take account of the fact that in some states women are entitled to vote as well as men and that these states would add a disproportionate number to the total vote throughout the country. A similar situation confronted the framers of the Australian constitution and they met the difficulty by providing that "until the qualification of electors of members of the House of Representatives becomes uniform throughout the commonwealth only one-half the votes for and against the proposed law shall be counted in any state in which adult suffrage prevails." This clause, however, proved to be entirely unnecessary because before the first proposed amendments to the Australian constitution were submitted the enfranchisement of women had been achieved in every state. On account of the recent remarkable development of the equal-suffrage movement in the United States it seems likely that by the time any new amending clause shall have received the approval of two-thirds of both houses of Congress and of the legislatures of three-fourths of the states this difficulty will have vanished. A temporary provision to meet it would not, however, interfere with the general plan of Senator LaFollette's resolution.

As this proposition provides, with adequate safeguards, sufficient facility for the proposal of amendments which are widely supported and for their incorporation into the constitution when a majority of the states and of the whole electorate have expressed their approval, it is worthy of the earnest consideration of those who, in the words of Professor Munroe Smith, have "realized that the first article in any sincerely intended progressive program must be the amendment of the amending clause of the Federal Constitution."

THE REORGANIZATION OF STATE GOVERNMENT¹

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TO understand the events of our times we must see them in true perspective. There is one notion that we must discard, namely, that our existing state constitutions represent constitutional arrangements made by the fathers, and having back of them the weight of their authority and influence. I think that idea is wrong. We have only to consider our political history to find that our state constitutions were simply provisional arrangements to meet a casual emergency. There was no idea that they should be regarded as fixing the type of government. They were a sort of act of settlement to provide some basis for action with the expectation that political experience would eventually bring governmental institutions into accord with the needs of the people.

This thought received strong expression in some early documents. In the *Federalist* (no. 47) Madison remarked:

I wish not to be regarded as an advocate for the particular organizations of the several state governments. I am fully aware that among the many excellent principles which they exemplify, they carry strong marks of the haste, and still stronger of the inexperience, under which they are framed.

And again in the *Federalist* (no. 37) he said:

It may be pronounced with assurance that the people of this country will never be satisfied until some remedy be applied to the vicissitudes and uncertainties which characterize the state administrations.

No. 15 of the *Federalist* is virtually an analysis of the defects and incapacity of state administration, and it was just such defects that energized the movement for our national

¹ Address delivered at the meeting of the Academy of Political Science, October 26, 1912.

constitution. In the constitutional convention of 1787 Mercer of Maryland bluntly declared that the real business in hand was to

protect the people against those speculating legislatures, which are now plundering them throughout the United States.

Mercer's analysis of the situation, reported in Madison's *Journal* for August 14, 1787, is remarkable for its prescience. He argued that unless the executive is directly connected with the legislature, its members will prey upon the people instead of defending the people. He said:

The governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the governors, not the people. The people are dissatisfied and complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability to their other evils.

As a remedy Mercer proposed what is now designated as cabinet government. He argued that "the executive ought to have a council, being members of both Houses."

The distrust of existing forms of authority was so great at that period that Jefferson, then in France, felt it as strongly as statesmen at home. On December 20, 1787, Jefferson wrote to Madison: "The instability of our laws is really an immense evil. I think it would be well to provide in our constitution that there shall always be a twelve-month between the engrossing of a bill and the passing of it."

These citations are typical of two tendencies very marked in our political history. Mercer's words show that he was looking toward structural order, whereas Jefferson looked toward restraint upon details of procedure. The latter tendency has so far governed constitutional change in this country. Owing to the notion that the way to guard against abuse of power is to multiply checks upon the exercise of power, our state constitutions are schemes of restriction constantly increasing in complexity. There has been continual change without im-

provement. From 1776 to 1909, 127 distinct state constitutions have been adopted in this country. We have no record from which to get the exact number of amendments, but from 1894 to 1904, 381 constitutional amendments were proposed, of which 217 were adopted. The process has had curious results. For instance, if you examine the constitution of Maryland, you will find in the bill of rights a declaration that "for the redress of grievances and for amending and strengthening the laws the legislature ought to be frequently convened." But the process of change since has been such that a provision has been inserted prohibiting the legislature from meeting more than once in two years, unless specially convoked by the governor.

Hostility to legislative sessions has become a general characteristic of our state constitutions. There has been a marked movement toward biennial and even quadrennial sessions. It is plain that there has been a displacement of the legislature from its normal position as the body representing the people. Constitutional provisions exhibit the legislature as being a misrepresentative body against which precautions must be taken. When you compare American constitutions with those of other countries, you will observe that restrictions upon legislative authority are an American peculiarity. European state constitutions assume that the legislative assembly will fulfil its proper functions; American constitutions are framed on the assumption that the legislature will misbehave unless subject to restraint.

Another American peculiarity is the expansion of the executive negative. After every session in New York or Pennsylvania the governor sits in judgment upon hundreds of enactments, determining which shall be law and which not. A similar exaltation of executive prerogative is seen in the action of governors dealing with the appropriation bills. In 1909 Governor Stuart of Pennsylvania cut \$20,000,000 from the appropriation bills by his vetoes. According to the traditional scheme the governor is the chief executive and it is the function of the representative assembly to control his actions, but now, instead of depending on the legislatures to control the governors, the people depend upon the governors to control the legisla-

tures. That is a very singular constitutional development, without parallel in other countries.

Another marked feature is the expansion of judicial authority, It cannot be understood unless we consider the moral basis as well as the legal basis. An abnormal extension of jurisdiction has been forced upon the courts through stress of necessity. Consider such a situation as that which existed in Montana after the legislature adjourned in 1907. The enactments of the session were so full of mistakes that the official publication made by the secretary of state contained the following notice: "The within are exact copies of the enrolled laws as the same reached this office, and neither this office nor the printer employed in the work is responsible for spelling or punctuation." One law, presumably meant to prevent the sale of diseased meat, imposed a severe penalty on the sale of "deceased" meat. Compliance with the law as it stood would have required butchers to supply their customers with live cattle. This is an instance of the sort of legislation that compels American judges to do what the judges of no other civilized country have to do, namely, go behind the language of the act to consider the motives and intentions of the legislature, the practical result being to substitute judicial discretion for legislative action. It is true that the law-making power has been virtually transferred from the legislature to the courts, but this result is to be imputed to legislative incapacity rather than to judicial arrogance. Those who are inclined to attribute to the federal nature of our government the powers over law-making exercised by American judges should consider the fact that no such tendency has been developed in Switzerland or Germany. Some tendencies appeared in Germany in that direction, and Brinton Coxe, in his treatise entitled "*Judicial Power and Unconstitutional Legislation*" collected a number of cases. But the courts refrained from courses that American courts have followed, not so much because of a difference in the legal situation as because of differences in the moral situation. When statutes are known to be a mature and circumspect expression of public opinion, judges will hesitate to set up a contrary opinion of their own, and indeed the principle has been laid down in the courts of Germany

that a constitutional provision is to be understood as a rule for the legislative power to interpret. No such attitude of serious opinion could exist in regard to the legislative power in this country, as its activities are too crude and irresponsible to command respect. The abnormal exaltation of judicial authority in America is correlated with an abnormal degradation of legislative authority. Rectify the legislative situation and the judicial situation will settle itself.

Efforts to obtain good government by constitutional restraint have about reached their limit, and the political philosophy from which they issued is becoming obsolete. American constitutions started at a time when there was a habit of regarding government as a thing distinct and apart from the people, so that popular liberty implied limitation of the sphere of government. Now government is coming to be regarded simply as an institutional embodiment of the will of the people. It is their agency, existing for their service, so that impairment of its power is an abatement of the sovereignty of the people. The people are now demanding a revision of the system of government, not to put more checks on the government but to take possession of the government itself. Questions of fundamental organization are now engaging consideration. This disposition affrights conservative sentiment, but while the political mythology usually invoked in opposition to reform does not deserve any respect, the anxiety is not baseless. It is not true that the system against which radical reformers are in revolt expresses the wisdom of the Fathers, but it is true that organic change is a dangerous process. History tells us that the making over of constitutions is a process that is apt to draw blood. The French Revolution has not lost its importance as a warning. But by using one's judgment instead of one's imagination to reach conclusions I think it will appear that risks attending the renovation of our state constitutions are closely limited by the essentially municipal nature of state authority. No matter what blunders may take place they will result in public loss and inconvenience rather than public disorder. It will be a dry revolution and not a wet revolution even at the worst.

The influences making for a reorganization of state govern-

ment are now so strong that a change of type is not likely to be deferred for many years. The eighteenth-century doctrine of the separation of powers was at one time as generally applied in city constitutions as it still is in state constitutions. It has been overthrown by the introduction of the commission plan of government, and the general improvement of municipal government ensuing from the spread of the new model is affecting public opinion as regards state government. It would be still more influential were it not that the body in which the commission plan connects the executive and legislative powers is too small for state use. But for difficulty on that point attempts might have been made before now to adopt the commission plan in state government. The way in which the commission plan has directed public attention to the advantages of direct connection between the executive and legislative powers will be fruitful in constitutional results.

The most significant indication of the tendency of the times is, I think, the new constitution which the Oregon reformers are endeavoring to introduce by popular initiative. In essence, it proposes that the governor shall be the general manager of the public business, meeting with the representative assembly as with a board of directors. He will appoint his cabinet, he will have the right to prepare the budget and propose his measures, and if his measures are rejected he will have the privilege of submitting them to the direct vote of the people. In acquiring these powers, he will no longer have the veto power. His duty will be to digest and propose measures, not to forbid what the legislature may have done. His power becomes positive instead of negative.

Not merely in Oregon, but even here in New York the trend of opinion is in the same general direction. It hardly seems possible to do anything more to increase the governor's power of negative action. The next step in order is to give him power of positive action; that is to say, instead of a power of veto he should have a power of initiative. Just such a constitutional change has already been proposed by Henry L. Stimson, at one time Republican party candidate for governor of New York and at the present time Secretary of War in

President Taft's cabinet. In a speech at Cleveland, on Jan. 28, 1911, he said of the governor:

Give him the same power to select and control his cabinet and the heads of his departments which is possessed by the President of the United States, especially with an absolute and unconditional power of removal. The same power should be carried through all of the executive departments through which is administered the regulative control of our public service corporations and other public utilities. Give him the undisputed right, not only to suggest, but to frame and introduce his own legislative measures, giving to such measures a right of precedence on the legislative calendar. Do away, for instance, with the spectacle that we have seen too often in New York, of measures desired by the governor held up apparently by the action of the clerk of the assembly. If the governor's power over legislation under such conditions should prove to be great, it could always be checked by the use of an optional popular referendum.

The short-ballot movement makes in the same direction. How are you going to shorten the ballot except by treating the governor as a general manager, filling subordinate positions by appointment, subject to responsibility for results, through close connection with the representative assembly? It is a familiar business principle that discretion and responsibility go together. In acquiring the power to propose and explain his measures directly to the legislature, and to bring them to determination, it will no longer be necessary for him to use official patronage as a fund with which to bribe the legislature to consider the public business, and it will be politically inconvenient to make appointments on other grounds than administrative efficiency.

The ideas and influences that I have sketched are yet to receive institutional embodiment, but that is simply a question of time. If an efficient type of state government appears anywhere it will spread everywhere. Certainly the present situation cannot endure. Its evils are not irremediable. The forces of progress will find a way out. I am sufficiently optimistic to believe that a reorganization of state authority is about to begin that will give the American people that which they have never had—institutions of efficient government.

THE RECALL OF JUDICIAL DECISIONS¹

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THE subject which I have been asked to discuss is usually called, though I think miscalled, "the recall of judicial decisions." It is proposed that, when an act passed by a state legislature shall have been declared contrary to the constitution, if a given fraction of the electorate shall petition to have the act referred to popular vote, it shall be so referred, and the people after a period for deliberation shall be given an opportunity to vote directly on it. If a majority of the people vote in favor of the act, it shall thereafter become law. As actually advanced in national and state Progressive platforms, the proposition is not only limited to decisions of state courts interpreting provisions in state constitutions, but is further limited to acts passed under the police power. Thus, the national platform of the Progressive party pledges that party to provide "that when an act passed under the police power of the state is held unconstitutional under the state constitutions by the courts, the people, after an ample interval for deliberation, shall have an opportunity to vote on the question whether they desire the act to become a law notwithstanding such decision."

It is, therefore, clear that those of us who advocate this new method of dealing with certain constitutional questions believe that its real usefulness is largely, if not wholly, confined to the situation which arises when an act passed under the police power of the state is declared contrary to the state constitution. The police power of the state is the general power to pass laws which direct the conduct of the individual or private associations of individuals, which says that we must do this or that. It therefore includes practically every law except those which relate to the conduct of public officials or the organization and the oper-

¹ Read at the meeting of the Academy of Political Science, October 26, 1912.

ation of the government. All acts dealing with social and industrial conditions are passed under the so-called police power. All acts regulating the conditions of employment, payment of wages in store orders, tenement-house conditions, and other acts designed to correct the more obvious social and economic injustices of our present industrial system, are police laws.

A large part of the present criticism of courts and judges, as well as the growing antagonism towards our constitutional system, is due to the decisions of state courts holding void attempts to enact legislation which many believe necessary to correct the more glaring injustices of our present industrial system. The so-called "recall of judicial decisions" is, at the present time, the only constructive proposal advanced to meet a condition which is giving grave concern to those who still believe that government under a written constitution is the best form of government for a democracy. As such it demands our careful consideration.

In order that we may be in a position to judge the proposal on its merits, a preliminary word must be said in regard to what we may call social and industrial legislation, and the peculiar function performed by the courts when they declare such acts as a compulsory workmen's compensation act contrary to the inherent rights of the individual.

Each country has always its social and economic problems, because man, considered collectively, has always the power of further progress. The problem of further progress is one of method. In any society the proper method of improvement becomes a matter of political controversy when a proposition which, it is alleged, will have the desired result and which involves a change in existing law or public administration, is made in such a way as to command serious attention from those having the power to effect the change. Every economic political controversy resolves itself into the question: Is it or is it not wise for society to change by law, in the manner proposed, the conditions under which the individual makes his choice of action?

Two illustrations will make my meaning clear. A given country has no tariff. A protective tariff is proposed. The

question is, will there be greater progress economically if the law changes the existing legal conditions under which the individual now makes contracts for the purchase of certain products? Again, a given community has no law governing the hours of labor. A proposal is made to pass a law prohibiting the employment of women for more than ten hours a day. The question is, should society change in the way proposed the conditions under which the contract of employment is made? In neither case is it proposed that society shall directly coerce the individual. No one is to be obliged to purchase goods or employ women. But in each case the law proposed limits the range of choice; if one buys from abroad he must pay duty; if he employs women he cannot do so for more than ten hours a day. Again, in the second illustration, the proposed law, theoretically at least, limits the woman's range of choice; she cannot contract to work more than ten hours. I say theoretically, because practically the economic situation of the woman may give her no real choice—she must take what is offered.

When we are confronted with the question whether it is wise to adopt a particular tariff schedule or a particular law governing the hours of labor, two things influence our decision. We have the facts bearing on the particular question. But we have also our existing prejudices or principles, call them what you will, relating to the limit to which society should go in imposing restrictive legal conditions. The difference between us at any given time is one of degree. The most extreme individualist admits that in some cases restrictive legal conditions of a drastic character should be imposed. Thus, no one objects to a law prohibiting the general sale of certain deleterious or poisonous drugs, or a law prohibiting the employment in dangerous industries of little children, even with the consent of the children and their parents. On the other hand, the most advanced progressive would regard a law limiting the hours of work for women to two hours in any consecutive twenty-four hours as arbitrary and unjust, or would oppose a compulsory workmen's compensation act which required the employer to pay to any workman who was permanently disabled by an accident occurring in the business double wages for life.

We all of us, conservative and progressive alike, have what we may describe as a mental scale, relating to the limits of regulatory legislation. At one end of the scale are supposed legislative acts, like the act prohibiting the employment of women more than two hours a day, which we regard, not merely as unwise, but as unjust and arbitrary. Further down the scale we come to laws, such as a law limiting the hours of employment of women to ten hours in any twenty-four, which we think wise or unwise, but which do not, even if we regard them as unwise, shock our sense of fairness. Lastly, at the other end of the scale, we have those laws which, while restrictive, we regard as expressing the unquestioned duty of society toward the individual, such as a law prohibiting the employment of little children in dangerous occupations.

Each of us has a more or less distinct mental scale of this kind. It may change from day to day or remain throughout our lives largely the same. That depends upon our experience and our temperament. We may think little of public questions, and our scale may be largely an unconscious one; but when forced to pass judgment upon a given proposal, out of our experience and environment and the extent and character of our study and observation, we reach a decision for or against the proposal by fitting such facts as we think have particular bearing on the question into the scale of arbitrary, unwise, debatable, wise, and essential governmental regulations, placing restrictive legal conditions on the individual choice of action.

While, however, each of us has such a scale, the scale of no two men is ever precisely alike. Certain legislation may be arbitrary and unfair to all of us. When, however, we pass from acts arbitrary to acts unwise, no two of us draw the same line. Indeed, few or none of us draw a very sharp line between arbitrary and unwise legal restrictions. The two classes of acts imperceptibly shade into each other; but the shadow on the scale that marks the passage from clearly arbitrary to debatable acts in any two individuals is never in the same place. Take, for instance, an eight-hour day for women. Some think that a wise proposal, some unwise, others regard it as more than merely unwise, as arbitrary, unfair, and destructive of the fundamental right of liberty of action.

Differences of opinion of this kind on such a measure as an eight-hour law exist in every country. Everywhere disputes arise as to the justice or wisdom of society in placing legal restrictions on the wage contract, employment of children, or the use of this or that kind of property. In all other countries, however, except the United States, such questions are settled finally by the legislature. When the legislature has passed the act, though many may think such action arbitrary interference with the individual and therefore more than merely unwise, nevertheless the legislature has spoken and the act is law. We alone, of all people, live under a system of government in which the courts have been given or have assumed the power to examine into the nature of the act, and declare it void, if it appears to them more than merely unwise; if, in short, in their mental scale it falls into the class of acts arbitrarily interfering with the individual's liberty or property.

You will note that I say that the courts here either have been given or have assumed this right. This is a subject on which those learned in our constitutional history differ. No one, at least no responsible person, accuses the courts of having assumed, without any grounds for the assumption, that they could disregard acts of the legislature which to them arbitrarily restricted the individual's choice of action. Some earlier judges took the position that a legislative act which interfered with what they regarded as inherent individual rights, was void because free governments were established to protect such rights, and when the people adopted a constitution and vested all legislative power in a legislature, they impliedly withheld the power to deprive the individual of his inherent rights. In modern times, as we have drifted away from the assumption that man has "inherent rights," the courts in setting aside acts of the legislature which to them appear grossly arbitrary, have relied on express declarations in the bill of rights which accompanies every state constitution. Now there are in the federal constitution and in all state constitutions clauses which it may be contended were intended to prohibit legislation arbitrarily interfering with the individual's freedom of action or with his right to use his property as he thinks best. The fifth

amendment to the federal constitution provides that the federal government shall not deprive any one of "life, liberty, or property, without due process of law." The fourteenth amendment imposes a similar prohibition on the states. Provisions similarly worded are found in a large number of state constitutions. In some constitutions we find in the bill of rights an express declaration that all men have "certain indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation and of pursuing their own happiness."

In interpreting the meaning of these clauses the courts were obliged to determine two questions. First, did or did not those who adopted the constitution by inserting these words intend to declare that the legislature should not pass an act arbitrarily interfering with the individual's liberty or property, or did they merely intend to declare that an administrative officer or any one else should not, without the warrant of legislative act, interfere with the individual's liberty or property? Practically all our courts, including the Supreme Court of the United States, have decided that the clause relating to due process of law and similar clauses prohibit arbitrary legislative interference with the individual's freedom of action, whether in the use of property or in the making of contracts. The publicist or constitutional lawyer, examining our history, may doubt the correctness of this conclusion; but there has been no vacillation in the position of our courts.

Having decided that the clauses referred to prohibit acts of the legislature arbitrarily interfering with the individual in his use of his property or his power to make such contracts as he pleases, the courts were confronted by a second question. The constitution, while prohibiting arbitrary legislative interference with the liberty of the individual, does not give any standard by which to judge an act as to whether or not it is arbitrary. Should the courts therefore refuse to enforce the provisions of the constitution, or should they do the best they can and declare those acts void which impress them as unquestionably arbitrary and unfair, or which are in their opinion arbitrary and unfair according to generally received standards? I do not mean to

say that the judges went through any such analysis in the first cases involving the contention that an act deprived a person of his liberty without due process of law because it interfered arbitrarily with his right to make a particular contract or use his property in a particular way. The law does not grow in that way. For instance, in 1884, the late Judge Gordon, of the supreme court of Pennsylvania, was presented with the question, is an act prohibiting the payment of wages in store orders constitutional? He did not consider it necessary to examine elaborately its provisions or to analyze the processes by which he came to the conclusion that it was contrary to a state constitutional provision. To him such an act was without question well within that part of his mental scale of restrictive legal acts labeled "arbitrary and unfair." His state had a constitution; the constitution had a bill of rights in which was a general clause inserted to prevent arbitrary legislation. To him the act in question was arbitrary legislation. He had no doubt about it. And, therefore, he contented himself with remarking that the act was one which could not be passed in this country.

From the time of Marshall's decision in *Marbury v. Madison*, the people of this country have been familiar with the court's refusal to regard as law acts of the legislature contrary to the constitution. Though there had always been a few people who insisted that the courts should follow the legislative act, leaving it to the people at the polls to rebuke the legislature, most of us have always seen the importance, if we are to preserve government under written constitutions, of the decision of the great Chief Justice. We have also recognized the logical strength of the position that if a court finds a legislative act clearly in conflict with a provision of the constitution under which the legislature acts, the courts should follow the constitution and not the legislative act.

The function preformed by the court in most constitutional cases is to preserve the intent of the people on some clearly defined subject as expressed in the constitution. For instance, experience convinces the majority of the people that the legislature should not have power to pass a law applying to one borough. They adopt a constitution in which they expressly

say that no special law shall be passed relating to one borough. Subsequently, the legislature passes a bill which violates this provision. The court in refusing to recognize the law is preserving the constitution as the people adopted it.

For a long time it was assumed that when an act imposing restrictive legal conditions was overthrown by a court because it deprived individuals, "without due process of law," of the right to contract or to use their property, the court was performing a function in no way different from its function in any other constitutional case. In one sense this is true. The constitution does say: "No one shall be deprived of life, liberty, or property, without due process of law," and in the opinion of the court the act in question does so deprive the individual. In disregarding the act the court is preserving the constitution. But why does the act, which we will say restricts the hours of labor, deprive persons of their liberty or property without due process? There are three possible answers: first, because it is arbitrary in the opinion of the court; or second, because it is arbitrary according to the court's opinion as to what was considered arbitrary legislation at the time of the adoption of the constitution; or third, because it is arbitrary according to the present generally received opinion of what is arbitrary. In any case, the court is not, as in all other constitutional cases, interpreting a precise declaration in the constitution, but is measuring by some more or less uncertain mental scale what is and what is not arbitrary and unfair legal restriction on individual action.

It is perhaps a fair question whether the action of our courts in this class of cases is or is not in accordance with the ideas of those who put into our federal and state constitutions bills of rights containing clauses against depriving a person of his liberty or property without due process of law, or similar general declarations. Quite aside from this question, there is much to be said in practise for a system which provides that an act of the legislature, which in the opinion of men trained in the law, and having a knowledge of our legal history, arbitrarily interferes with the freedom of the individual to contract, or do some other act, should not become a law until the people

have a chance to say at the polls whether or not they wish that act to become law. Admitting that no other civilized country lives under a system in which the judges act practically like a council of elder statesmen, vetoing acts which shock their sense of justice, is there not much to be said in favor of the system?

At the same time the most thorough Tory and Conservative among us has never contended for a moment that, if a persistent majority of the people want an act, they should not have the right to put their desire into effect in spite of the opinion of the court that the act arbitrarily deprives a person of his liberty or property. The only difference is as to the method by which this desire on the part of the persistent majority of the people should be carried out. At the present time we have only one method, the formal amendment of the constitution. If, for instance, in New York a compulsory workmen's compensation act is declared to be contrary to the state constitution because it arbitrarily takes the property of the employer away from him without due process of law, under existing conditions the people of New York, if they have a persistent desire for the act, must amend their state constitution. Indeed, this is what they are doing at the present time. Why, it may be asked, is not this a perfectly satisfactory method?

Let us admit that it is not wholly unsatisfactory. An amendment can be drawn and has been drawn reciting what are regarded as the essential elements of a compulsory workmen's compensation act; on the adoption of this amendment the act can be re-passed. This method of formal amendment, in contrast to the so-called recall of judicial decisions, is often spoken of as "the orderly method of amendment." And yet is it orderly? After you adopt your amendment how does your constitution read? In effect it reads as follows: "Arbitrary legislation interfering with the individual's freedom of contract or taking his property shall not be passed, but any act having the essential elements of a compulsory workmen's compensation act, no matter how arbitrary, may be passed." The process of amendment may be orderly; but is there not something which looks very much like disorder in the result? Should the courts of any state declare much legislation affecting social and

industrial conditions unconstitutional because it deprives the individual of his liberty or his property without due process of law, the constitution of that state would soon become in large part a series of long statements as to what could be done in spite of the due-process-of-law clause. It does not take much foresight to perceive that if in any state there exists for any length of time a difference of opinion as to the necessity for and arbitrary character of certain social legislation passed under the so-called police power of the state, it will not be long before the people will adopt an amendment wiping out forever the due-process provision of their bill of rights.

The real trouble with our present method of amending the due-process-of-law clause whenever the courts under that clause have declared unconstitutional an act persistently desired by the people, is that it is not an orderly because not a scientific method of meeting the situation. The method of formal amendment in such cases fails to recognize the nature of the function which the court has performed in this class of constitutional cases. The court has not declared that the act violates a provision in the constitution which is clear, precise and definite, and which if the people do not like they should abolish. The real situation is that the court has been given, or has assumed, whichever you will, under this due-process-of-law clause or some other similar clause in the bill of rights, the right or power to declare unconstitutional an act which is contrary either to its own or to the generally received ideas of social justice, and therefore subversive of inherent individual rights. What the people need in such a case is not the power to adopt formal amendments to the due-process-of-law clause; it is not the power to take a whole realm of possible legislation and declare that thereafter any law falling within this realm, no matter how arbitrary, shall thereafter be constitutional. The court has declared in effect that a certain act is arbitrary, and as such subversive of the rights of the individual. But if in fact the act, to the majority of the people, does not seem arbitrary, they should have a method by which the act can become law, without forcing them, by the passage of formal amendments to the due-process clause of the bill of rights, to deprive

the court of all power to arrest social legislation of the same class, however arbitrary or unfair such legislation may be. This is exactly the power which it is proposed to give to the people by the proposition known as the recall of judicial decisions. In one sense it is a method of temporarily amending the constitution. In another it is an attempt to preserve the present power of the courts to stop legislation which they believe contrary to the sense of social justice persistently prevalent in the community from going into effect until that community has been given an opportunity to express through the ballot its own opinion of the act.

THE RECALL OF JUDICIAL DECISIONS¹

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NO reasonable, thoughtful man would attempt to sustain the proposition for the recall of judicial decisions in its widest sense. Judicial decisions may occur in litigation between parties, and the title does not necessarily exclude jury trials. Of course no one really desires to have a recall which shall apply to such cases. We have recently had a murder trial, and the jury has reached a certain conclusion. There is an appeal to the court of appeals. Suppose we exclude the verdict of the jury, and confine the question to the decision of the court. Do we mean that in case the court decides for reversal there should be an appeal to popular vote? Of course such an idea is absurd. Yet many suppose the proposition to be that the people shall pass on any judicial decision, whether arising in individual cases or in those concerning governmental and general public interest. In the first place, if we limit the proposal to cases of public interest it becomes difficult to draw the line between such questions and those concerning the individual. A man tried for murder is personally much concerned, and so is the public. When it concerns the police, the government also is interested. These trials, then, are of public interest. Very few will attempt to draw the line here, and the best thinkers have wisely limited the proposal to some specific topic. One prominent writer says that he would limit the recall to cases of due process of law. What is meant by that term? What does the constitution mean? Some lawyers may have a definite answer for this question. Personally I have not, and I have not met one who has. In a special instance you may say that certain action deprives the defendant of due process and is forbidden by the constitution, but can you say generally how "due process" should be defined? Do you mean that the

¹ Read at the meeting of the Academy of Political Science, October 26, 1912.

courts are to have power to determine whether in a given case the question of due process has arisen or not, and whether the recall is applicable to the case? Surely it is not intended to leave the determination of this question to the courts. That would negative the whole proposition. And who is to decide if the courts do not? Suppose that in some way a judicial decision is about to be submitted to the people for review, and some one wishes to enjoin this submission on the theory that this is not a proper case for the exercise of the recall, in that it does not involve the question of due process—there seems to be no tribunal to decide the question. Even though one court holds an act unconstitutional on the ground that there has not been due process of law, another court may find that the question of constitutionality does not arise.

Dean Lewis, very wisely it seems to me, regards the question as limited to amendments of the constitution. We often imagine that the constitution is at fault, when as a matter of fact the difficulty is with a decision or the framing of a bill. Recently the court of appeals of New York reversed a case on the ground that a certain statute was unconstitutional. A great deal of criticism was leveled at the decision. Another bill was drawn the following year which avoided the defects criticized by the court. It carried out every object that the original draftsman had in view, and also complied with the requirements of the constitution. No constitutional amendment was needed, but merely intelligence and skill on the part of the draftsman. Again, it was said the income tax was improperly held to be unconstitutional. The supreme court for many years held that an income-tax law was constitutional, but now a decision says that it is not. The fault is not with the constitution, and the original view held by the court for years may sometime be reaffirmed, and the desired result reached without any amendment. My belief is that the federal constitution owes its strength mainly to the fact that it is general and does not attempt particulars. It lays down general rules of conduct and then leaves the matter to Congress to work out in detail. From this characteristic comes its adaptability to changing conditions. Its provisions are fundamental.

If you find that a bill is incorrectly drawn there can be no quicker process than to have it redrawn and submitted the next year. There seems to be no sound objection to such a course. We must educate the draftsmen of our bills, the thinkers among the public, and mainly our lawyers. That is why the present public discussions may be objectionable. They distract our attention from the real points of danger. I believe that many of our rules of law are wrong. I think we are living under a system adapted in some respects to a civilization existing three hundred years ago. It seems to me that some sweeping changes might well be made. Thus we might abolish our rules of evidence, which are simply rules of exclusion. So, too, we could modify the subject of contract, and, for example, do away with what seems to be the unnecessary and harmful doctrine of consideration. I would change many other branches of our law. Thus we know that our criminal procedure is at fault and that there are many technicalities which allow rascals to escape. There is a vast amount of traditional reverence for what was quite proper four or five hundred years ago, but is not so now. We know that many sound decisions shock common sense. Do not complain of these things, but get them changed by the legislature.

Our study should be mainly directed towards a solution of these difficult questions. Once bring our law in accord with modern civilization and many of our troubles will cease. Let us devote ourselves to a study of existing conditions, and determine how best we can educate our people and lawyers, so that these problems may be scientifically and carefully worked out. We have a disease; we do not want quack medicines, such as are often suggested for the evils that exist. If we go ahead trying all the various remedies, the result probably will be that the situation will become far worse than it was before. We should become more patient. I do not believe that any thoughtful man would really want the restraints upon our impulses taken away. We speak of the people—we generally mean “other people” when we say “the people”—as acting thoughtlessly, but the educated man is just as likely to be carried away by the emotions of the moment; anybody may feel the madness of the mob.

Therefore we all need checks. What these should be is a question requiring thought, but I believe this entire present-day movement arises, not necessarily because the people are dissatisfied with the power of the courts, not necessarily because they believe that the English system without written constitution is best for our people, but because they justly believe that there is something wrong. We should devote our energies to seeing what is the real evil.

We say the people in the long run are right, and that is so; but we do not mean that they are necessarily right when they are carried away by excitement. No intelligent man wants a decision to rest on such a foundation. We must protect ourselves against this result, but we should not be so conservative as to prevent any reformation. Let us bring about the desired changes in an orderly, sound, scientific manner. This is not an easy thing to do, and requires much thought. It demands profound study, and able, experienced, thoroughly trained lawyers should give their earnest thoughts to the task, thus saving the people and our profession, for the good of the people depends on keeping our profession sound.

THE DEVELOPMENT OF AMERICAN CONSTITUTIONAL LAW¹

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AMERICAN public law is peculiar, if not unique, in the extent to which the powers of our representative legislatures are restricted by written constitutions. Many of the existing restrictions are required by our federal form of government. The fact that the field of legislative action is divided between the federal Congress and the state legislatures has compelled us to limit, in one way or in another, the powers of both, either by indicating what they may do or by stating what they may not do. There are, however, other restrictions that are not required by the federal form of government. Our federal and state constitutions contain special prohibitions designed to prevent the misuse of legislative power. The most important of these special prohibitions are those which are designed to protect personal liberty and private property and to maintain a formal legal equality.

Natural Rights

These special prohibitions, introduced in our earliest and repeated in our latest constitutions, embody principles which had slowly taken form, in Europe, during a period of more than two thousand years. The interests which they protect had come to be known as "natural rights," and these natural rights were regarded as part of a body of "natural law." To this natural law many European theorists, from the period of the Stoics to the times of Locke and Rousseau, had ascribed a transcendent authority; and some of them had claimed that laws established by human authority which were not in harmony with natural law were not, properly speaking, entitled to the name or to the force of law. In those instances, however, in which

¹ Read at the meeting of the Academy of Political Science, October 26, 1912.

the recognized political authorities could not be induced, by argument or by agitation, to change the positive law or its interpretation, no method had been discovered by which the law of nature could be made to prevail except that of revolution. Our separate national life began in a revolution, justified by appeals to natural law; and in our constitutions we have elevated a certain number of natural-law principles to the position of supreme positive law.

The Judicial Power

Our public law is unique, again, in the extent to which the interpretation and enforcement of constitutional restrictions upon legislation are entrusted to the judiciary. The ground upon which Hamilton and others based their assertion that this power belongs to the courts, at least in what are called "non-political" questions, involving private rights, remains unshaken. That a representative legislature of limited authority cannot validly act beyond the scope of its authority is self-evident. That, if it attempts to do this, its act is not law, and that it is the right and the duty of the courts, in deciding cases, to decide what is and what is not law, seemed to Hamilton and to Marshall equally evident. Although this theory, when first formulated, was disputed, and has often since been combated—although it has been strongly urged, in particular, that it ignores the distinction between a legislature whose power is coördinate with that of the court which undertakes to restrain it and a legislature whose power is subordinate—nevertheless this theory also has been accepted. The question has been settled in practice. The judicial power rests upon a basis more solid than any written text: it rests upon our established constitutional custom.

In the development of our constitutional custom, however, the judicial power has proved to be greater than was perhaps originally foreseen by its most far-seeing advocates. The provisions in our constitutions which prevent our legislatures from interference with private rights are brief in their wording and broad in their scope. Drawn, as we have seen, from the theory of natural rights, as formulated in the eighteenth century, they

have much of the vagueness which has always characterized natural law. This law, as Hobbes long ago said, is, more than any other, in need of an interpreter. In confiding its interpretation to the courts, we have enabled them to make much unwritten constitutional law.

On the whole, the peculiar features of our constitutional system have stood the test of time. For more than a century, at any rate, and until recently, the system has worked fairly well in its proper field. When the courts have attempted or have been constrained to extend their control over matters essentially or mainly political, as the federal Supreme Court did in the Dred Scott case and in the legal-tender and income-tax cases, the results have been less satisfactory; and in recent years the Supreme Court has acted wisely in avoiding the questions raised by the restriction of suffrage in the Southern States and by the adoption of the initiative and referendum in Oregon. Legal questions that are ultimately economic and social, rather than political, form, under our system, the proper domain of the judicial power; and it is in this domain that the system has worked satisfactorily. It is, however, possible that its satisfactory operation has been due, in large measure, to the persistence, until a recent period, of the economic and social conditions which prevailed when it was first established. For colonial and frontier life, for the settlement and development of a vast expanse of territory, free individual initiative and unrestrained social coöperation are of the highest value, and a minimum of legal restraint and governmental supervision is desirable. It is a well-known fact that French and German colonies do not thrive to-day as English colonies have thriven; and this is attributed by French and German writers to an unduly elaborate system of governmental management and restraint—to what the Germans call *das Assessorenthum*. Apparently, however, as this country has become settled, as its population has become denser and its economic system more complex, the restriction of governmental action and the extraordinary protection accorded to private rights have become less satisfactory. There is a growing demand for legislation intended to establish a more equal liberty and a less mechanical equality—for what

is called "social" legislation. It has been found that legislative measures of this sort have great difficulty in running the gauntlet of the courts. The fact that some such measures have been pronounced unconstitutional has aroused popular dissatisfaction; there have been many protests; there is a popular agitation against the degree of control which our courts exercise over legislation. The situation is one that can no longer be met by exclusively legal reasoning: the issues are political.

Popular Sovereignty

When the federal constitution of 1787 was submitted to the conventions of the several states, Hamilton made an ingenious effort to reconcile the judicial control of legislation with the principle of popular sovereignty. His political argument has not worn so well as his legal reasoning. His theory that the courts, in refusing to give effect to an unconstitutional law, are simply giving effect to the intention of the sovereign, preferring the intention of the people to the intention of their agents, seemed more satisfactory at the time than it does to-day. It does not now fit all the facts.

The Development of Our State Constitutions

In the several states, indeed, the written constitutions are now more obviously the expression of the will of the people than they were in Hamilton's day. In his time, and later, state constitutions, like ordinary laws, were adopted by representative bodies. To-day it has become our practise to submit constitutional revisions and amendments to popular vote. At the same time, however, other changes have occurred that tend to modify the relation of the state courts to the state electorates, because they tend to efface, within the several states, the distinction between constitutional law and ordinary law.

In the first place, the field assigned to constitutional law, as contrasted with the ordinary law, has been greatly extended, until today the matters with which each is concerned have come to be largely identical. Like our federal constitution, our first state constitutions were frames of government and bills of rights. By successive amendments and revisions, our later state consti-

tutions have projected themselves more and more extensively over the fields of legislative procedure, criminal law and procedure, private law and civil procedure. When a legislature has done something which, in the opinion of the people of the state, it ought not to have done, constitutional amendment has usually withdrawn from its competence the field of action in which it went astray. When a legislature has left undone something which, in the opinion of the people, it ought to have done, constitutional amendment has frequently dealt with the matter in the form of positive regulation. The popular dissatisfaction with representative legislatures has also expressed itself in constitutional amendments which permit legislatures to assemble but once in two years and limit the duration of their sessions.

These changes, which have fettered and largely crippled the representative legislatures of our states, have brought in their train another important change. The direct popular action now required in many matters for the development of state law is assuming a new form. In addition to the process of constitutional amendment by referendum, we have now, in many of our states, a process of legislation by referendum, and to the legislative referendum some of these states have added the popular initiative. With this change, the distinction between constitutional law and ordinary law becomes even hazier. The extension of constitutional law over the field of ordinary law had already largely effaced the distinction between the two bodies of law as regards the *matters* with which they respectively deal. The development of direct popular legislation wholly effaces the distinction between constitutional law and ordinary law as regards the *source* from which they respectively emanate. The only distinction that remains is procedural. If a measure be submitted to and approved by the electorate in the manner prescribed for amendment of the constitution, it becomes part of the superior constitutional law. If it be submitted and approved in the manner prescribed for direct legislation, it becomes part of the inferior ordinary law. If the methods of submission and approval are substantially the same in both cases, the distinction is purely nominal: a measure that is described, in its title, as an amendment to the constitution is constitutional law; a measure not so described is ordinary law.

Under these conditions, Hamilton's political reasoning is on longer applicable. If a state adopts by popular vote a measure that is not described as an amendment to the constitution, and if the state judiciary declares this measure unconstitutional, the court is not preferring the intention of the people to the intention of their agents; it is preferring the earlier intention of the people to their later intention, their forethought to their afterthought.

When we consider the constant and irresistible action of political facts upon formal law, it is a serious question whether the distinction which is still drawn in our states between constitutional amendment and direct legislation can long be maintained. From the point of view of the popular-sovereignty theory, it is quite illogical that the courts should have power to declare direct legislation unconstitutional. This may well be regarded as an argument against direct legislation; but we have not now to consider whether this form of legislation is or is not desirable. It exists and it is spreading; it is, accordingly a political fact; and what we must take into account is the effect of this fact upon our political theory and practise.

The "Recall of Decisions"

That the formal distinction between the constitutional law and the ordinary law of our states is tending to break down and disappear is drastically illustrated by a proposal that has attracted much attention during the past few months, the mis-called "recall of decisions." The proposal is that a law which has been pronounced unconstitutional by the highest court of a state, on the ground that it is in conflict with the state constitution, shall, on popular initiative, be submitted to popular vote, and, if approved by the electorate, shall become law.

This proposal is a wholly natural and absolutely logical product of the "people's rule" movement. Moreover, however little Hamilton would have liked to see his own artillery turned against his own political intrenchments, the proposal is logically consistent with the popular-sovereignty theory which he employed in defense of the judicial power. If, in pronouncing a law unconstitutional, the judiciary represents and acts for the

people, preferring their intention to that of their legislative agents, it is not easy to show why the intention of the people, directly declared, is not to be preferred to that of their judicial agents. If, on referendum, the voters of the state may disallow the act of one set of agents, it is difficult to see why they may not similarly disallow the act of another set of agents.

It is said, in reply, that a judicial interpretation of law is a different thing from an act of legislation. From the popular-sovereignty point of view, however, the difference is immaterial: the interpretation of constitutional law by a court and the act passed by a representative legislature are, each of them, attempts of agents of the people to express the intention of the people. And in fact the distinction between legislation and judicial decision is largely a formal one. Every authoritative interpretation of written law establishes a rule of law; and, if the law to be interpreted be general in its terms, interpretation may make a great many rules of law. This fact is recognized in our legal theory: the Supreme Court of the United States has more than once invalidated a judicial decision rendered by the highest court of a state, on the ground that a state may not make "a law" impairing the obligation of contract.

Recognition, however, that a proposal is logically consistent with accepted political theory has never been regarded by any English-speaking people as a sufficient reason for adopting it. When a change in political practise is proposed, such a people always inquires, first, whether any change is necessary; second, how the proposed change is likely to work.

The first of the questions is answered by the opponents of the "recall" proposal, by pointing out that in most of our states it is easy to amend the constitution. In some of our states such an amendment may be proposed either by the legislature or by a small minority of voters, and may be adopted, with little delay, by a majority of those who vote on the proposal. If in other states the process of amendment is unduly difficult or protracted, the obvious and sufficient remedy is to change the process. On the other hand, the advocates of the "recall" proposal insist that the ordinary process of amendment has unnecessary and undesirable results which the "recall"

avoids. This contention was first clearly and intelligibly presented by Dean Lewis of the University of Pennsylvania Law School. He maintains that the "recall" is not only a more efficient instrument for adapting written constitutions to changing economic and social conditions, but that it preserves the judicial control over unconstitutional legislation which the ordinary form of amendment tends to impair. This last assertion seems to me to be true.

The question how the "recall" will work in other respects—the question, in particular, of its immediate practical results as distinguished from its ultimate theoretical results—has been little discussed. In endeavoring to indicate how it will probably work, we must, of course, take the proposal as it is now formulated. It is obviously impossible to consider how all other conceivable proposals of a similar general character might operate.

The constitutional restriction upon legislation which has attracted most attention during the past few years, and which has elicited most discussion during the past few months, is found in provisions requiring legislative measures to conform to "due process of law." And, inasmuch as it has long been recognized by our courts that due-process restrictions may cease to be applicable and operative when legislative action is taken under the "police power," this power also has been much discussed. The discussion has not turned upon the proper meaning of due process or upon the extent of the police power. The question is: how the interpretation which the courts give to these expressions is to be controlled; how the people are to exercise a power to determine, in last instance, what their constitutional law shall be.

As the "recall" proposal was originally presented by Mr. Roosevelt, the referendum on decisions was not, apparently, to be limited to due-process cases; it was to be available whenever a state law was declared to be invalid because in conflict with any provision of the state constitution. In view, however, of the inconvenient and even absurd results that might possibly be produced by an unlimited "recall," it is now proposed that referenda on decisions shall be limited to due-process cases. The

proposal is so formulated, for example, by Mr. William L. Ransom in his recent book on *Majority Rule and the Judiciary*, to which Mr. Roosevelt contributes an introduction.

In order that we may see how this limited "recall" would probably work, let us take a situation which has already been much discussed, which has been frequently chosen by the advocates of the "recall" to illustrate the need of a new remedy, and which Mr. Ransom claims would be remedied by a "recall" limited to due-process cases. Let us take the situation which exists in New York as regards compensation of workmen, or of their widows and children, in cases of injury or death caused by industrial accidents. A law passed by the state legislature was pronounced unconstitutional by the Court of Appeals, because it proposed to take the money of the employers without due process and was not within the sphere of the police power. It is claimed that a "recall" limited to due-process cases would have sufficed to validate the law and make it immediately effective. But, in pronouncing this law unconstitutional, the New York Court of Appeals declared that, for the purpose of reaching a decision, it was not necessary for the court to determine whether the act was unconstitutional solely as denying due process. It declined, in particular, to decide whether it was unconstitutional as denying the employers' right to trial by jury. It seems clear, therefore, that even if the decision of the court had been "recalled," the law would have been validated only so far as due process was concerned, and that the question which the Court of Appeals declined to decide would remain open. If, when this issue was raised, the Court of Appeals should again declare the law unconstitutional, it would apparently be necessary, under the limited-recall program, to introduce a new amendment to the constitution, widening the scope of the recall, and to institute a new referendum. If the new amendment were limited in its application to the matter of jury trial, it is not impossible that question might arise whether the law was not in conflict with some other provision of the constitution, or with the general spirit of the constitution.

So numerous are the grounds upon which any law that attempts to realize what is to-day described as "social justice"

may conceivably be pronounced unconstitutional, that it will be no easy task to frame a recall amendment that will cover all these grounds and yet remain limited in its scope. It seems doubtful, to put it mildly, whether any recall proposal thus far formulated promises to secure a more speedy adaptation of our state constitutions to changing conditions than the existing process of substantive amendment. It seems highly improbable that it will bring to a more prompt and satisfactory conclusion any differences of opinion or of sentiment between the state courts and the state electorates. For a single political battle, terminated by a single substantive amendment, the limited "recall" appears to substitute, primarily at least, a prolonged political war, in which the electorate would realize its intention only after several campaigns. Moreover, after each campaign, the limited recall would be widened in its operation; and it would thus gradually approach that unlimited recall which the supporters of the plan do not at present advocate.

A more fundamental objection, which applies to any conceivable form of referendum on laws pronounced unconstitutional, is that it offers us a crude and unsatisfactory means of obtaining the end desired. The purpose of the proposed referendum is to obtain, particularly in matters of natural right, popular expressions of the sense of social justice. Such expressions are to create precedents which the state courts are to follow. It is, however, extremely improbable that the electorate will consciously attempt to express its sense of social justice. The great majority of the voters will express their varying judgments as to the probable effects, good or bad, of the particular measure submitted to them. If it be replied that the majority judgment will contain, by implication, an expression of its prevailing sense of justice, it may be remarked that implications are matters of opinion, and that widely different implications may be discovered in every such popular decision. After every general election there appear widely different theories as to what was really "the verdict of the people." It may be added that successive referenda on different measures may well contain implications that cannot easily

be reconciled. The difficulty which the courts now experience in determining the true reasons for their own decisions on constitutional questions will appear slight indeed in comparison with the difficulty which they will encounter if they be called upon to determine, first, what intuitions of social justice seem to be implied in a series of popular decisions, and, second, what rules of constitutional interpretation can be formulated that will express these intuitions. To the average lawyer such a process of developing law seems fantastic: hence the generally hostile reaction of the legal profession to the "recall" proposal. To the student of legal history, on the other hand, the process is not fantastic but familiar. It was by this very process—the expert interpretation of popular decisions—that law was taking form in the Mediterranean city-states twenty-five centuries ago and again among the Teutons fifteen centuries ago. If the reaction of the legal historian to the proposal is also hostile, it is not because the process seems novel but because it is seen to be archaic. Like the whole direct-government movement, of which it is a product, it is a reversion to the primitive processes of early civilization.

The Development of the Federal Constitution

Closely connected with the problem of adapting our state constitutions to changing social and economic conditions is the problem of the development of our federal constitutional law. The due-process requirement and other restrictions found in our state constitutions are contained in the federal constitution also; and a state court may declare an act of a state legislature invalid because it is in conflict with the supreme organic law of the nation as well as with the constitution of the state. The New York Workmen's Compensation Act, for example, was declared to be in conflict with the federal as well as the state constitution; and it would apparently remain invalid even if the due-process clause of the state constitution were amended or overridden. This being the case, it seems singular that at present there should be so much discussion of means of developing our state constitutions and so little discussion of the possibility of developing the federal constitution.

The explanation is, of course, that during the last few years the attitude of the federal Supreme Court toward social-reform legislation has been more friendly, or at least more tolerant, than that of some of our state courts. At Washington the judicial interpretation of due process has come to be less purely historical than at some of our state capitals, and a somewhat wider scope has been attributed to the police power.

When the highest court of a state has declared a law invalid, because in conflict with the federal constitution, there is at present no possibility of appeal to the federal Supreme Court. Appeal can be taken only when the law is declared to be constitutional. This rule, however, is statutory; it is contained in the federal Judiciary Act. For the present, accordingly, the effort of those who desire to promote social-reform legislation is very properly concentrated on the proposal so to amend the Judiciary Act that all cases involving a question of federal constitutional law may be carried to the federal Supreme Court. Such a change, coupled with substantive amendment of the state constitution or with the adoption of the "recall of decisions" in the several states, will doubtless, as things stand, make the course of social-reform legislation run much more smoothly. If appeal lies to the Supreme Court, the state courts, in their interpretation of the federal constitution, will follow more closely the decisions of the federal judiciary; and it will be increasingly difficult for them to maintain divergent interpretations of similar provisions in the state constitutions.

For the present, then, this opportunist program seems to meet the situation. It should, however, be remembered that, while the attitude of the federal Supreme Court is at present satisfactory to friends of social-reform legislation, this has not always been the case. It was not the case a few years ago, when the Supreme Court decided by a bare majority (five to four) that the New York legislature could not limit the hours of adult male labor in bakeries. At that time the United States Supreme Court was subjected to nearly as much criticism as has since been directed against the New York Court of Appeals. The subsequent change observable in the attitude of the Supreme Court is coincident with an unusually rapid change in its

membership; and the appointments which have so largely changed its membership were made during the period in which there was widespread criticism of its conservative position. There is no conclusive reason to assume that this court may not again, at some future time, become at least as conservative as the majority of the state courts.

The problem of adapting our federal constitution to changing economic and social conditions, although for the moment relegated to the background of political discussion, will in the long run be recognized as far more important than the problem of constitutional amendment in the several states. Its solution is far more difficult. Formal amendment of the federal constitution is almost impossible. During the last hundred years no amendments have been adopted except those that followed and sealed the victory of the national forces in the Civil War. If, as now seems probable, the pending income-tax amendment be adopted, it must be remembered that this proposal has come before the country under exceptionally favorable auspices. Proposed by a Republican President, approved by the Senate unanimously and opposed in the House of Representatives by only fourteen members, it has the further advantage of presenting itself, not as an innovation, but as a restoration. It accords to Congress a power which that body has previously exercised with the approval of the Supreme Court, and of which it has been deprived only because that court has reversed itself. The failure of this amendment, indeed, would go far to prove that formal change of the federal constitution is at present impossible, but its adoption should not unduly elate those who desire further amendments. The absurdity of the existing process of amendment is best illustrated by the fact that thirteen states containing less than 5 per cent of the total state population could defeat an amendment supported by thirty states containing about 95 per cent of the total state population. Under such a process, amendment of the federal constitution is possible only by what is practically almost unanimous consent. And even where consent is so general as to be almost unanimous, the process is exceedingly slow, as is shown by the fact that the income-tax amendment was submitted to the state legislatures three and a

half years ago and has received but thirty-four of the thirty-six state votes required.

The difficulty of formal amendment has forced us to develop our federal constitution largely by interpretation; and as, in all matters not of a strictly political character, the power of final interpretation has been accorded to the judiciary, the greater part of our unwritten constitutional law is found in the federal law reports. So great is the power of interpretation to make law, especially when the text to be interpreted is so concise as is that of the federal constitution, and so freely has the Supreme Court made use of this power, that to many students it seems that formal amendment is unnecessary. To many, however, it seems doubtful whether our federal constitution meets all the needs of the existing generation, and few will be so bold as to affirm that it can be adapted without formal amendment to meet all the needs of the generations yet to be born. And if a point is reached at which the constitution cannot be bent by the economic and other social forces which it already checks, there is danger that it will be broken.

Here, again, Hamilton's defense of the judicial power has become unsatisfactory. The greater part of the written constitution took form one hundred and twenty-five years ago; its most recent provisions were adopted nearly half a century ago; and when the Supreme Court declares a law invalid because in conflict with the constitution, it is not preferring the intention of the people of the United States to that of their agents; it is preferring the intention of the dead to that of the living. To infer any real consent of the living from their acquiescence, when change is almost impossible except by revolution, is to employ a legal fiction.

It is not yet formally proposed to apply a popular "recall" to the decisions of the federal judiciary; but there have been suggestions that, if the system should be introduced and should approve itself in the several states, it might be extended to the nation. The chief difficulty which will be encountered by anyone who endeavors to formulate a proposal for the submission of constitutional questions to the people of the United States is that, in public law, the people means the electorate, and that

there is no national electorate. Nor can the forty-eight state electorates fitly be recognized for any purpose whatever as a national electorate. The conditions on which the different states grant the right to vote are so diverse that a popular majority obtained in a nation-wide vote would neither deserve nor receive serious consideration. Such a majority might possibly be due to the fact that in nine or ten states the total vote, and consequently the majorities recorded, were doubled by woman suffrage. It might be due to the fact that negroes, who vote freely in the northern and western states, are practically excluded from the suffrage in the southern states. To the total affirmative and negative votes of these forty-eight electorates no legal significance could reasonably be attached unless the conditions of voting were equalized. A "recall" of the decisions of the federal judiciary could, of course, be legalized only by constitutional amendment. Unless such a proposal carried with it the further proposal that Congress be empowered to determine who should vote, it would assuredly be rejected because of its absurdity. If it carried with such a further proposal, it would probably be rejected by the votes of the southern states alone, even if the rest of the country favored it. For these reasons, if there were no others, the "recall" of federal judicial decisions must be regarded as a matter of speculative interest only. For the present, at least, it is not in the realm of practical politics.

There remains the question whether the federal constitution cannot be made more adaptable to social changes by changing the process of amendment. Here, in my opinion, we reach the heart of the question that is before us. The amending clause of the federal constitution can be amended by the vote of three-fourths of the states. A new and less difficult method of amendment, if thus legalized, would make it possible to change by orderly and constitutional process any provision of the existing constitution except that which assures to all the states equal representation in the federal Senate. The different plans which have been proposed for amendment of the amending clause in the federal constitution are so fully discussed in Mr. Thompson's paper that they need not here be noted. By the adoption of

any of these plans the constitutional situation would be radically improved. To Senator LaFollette's plan there is, however, one serious objection. Starting with the sound idea that a majority of states is required by the federal principle and a popular majority by the democratic principle, he proposes to recognize the forty-eight state electorates as a national electorate, and to treat a majority resulting from the combination of the heterogeneous votes cast in the forty-eight states as a true popular majority. The objections to such a procedure have already been stated.

Conflicting Legal Theories

There is, as the political debates of the past year have shown, a large and respectable body of American citizens who deny the necessity of adapting our written constitution to changing economic and social conditions. They are satisfied with our present organic laws. They are particularly averse to qualifying, in any manner, the protection which our written constitutions give to personal liberty and to private property. They are equally averse to impairing the formal legal equality of all persons which these instruments safeguard. They not only object to any formal change in what Professor Burgess has described as "the constitutional organization of liberty," but they dislike any modification of the existing organization by re-interpretation of the old formulas.

Men of this way of thinking are especially numerous in the legal profession. The ordinary lawyer is mainly concerned with the protection of private rights, and in helping to protect them he renders valuable service to society as well as to his clients. General social interests are less obvious to him: they are in the background of his daily life and thought; private rights are in the foreground.

Most of these persons, whether lawyers or laymen, are in reality adherents of the school of natural law. The lawyer who has read his Hobbes or his Austin may assent, intellectually, to the doctrine that law is the expression of the will of the political sovereign; the lawyer who knows his Maine or his Holmes may similarly assent to the theory that law is a historical product; the one may call himself an analytical, the other a historical

jurist; but if either feels that there are legal principles which the sovereign cannot modify and which historical development merely exhibits, he is really a disciple of the natural-law school. Similarly, many laymen, who know nothing of the wranglings of the philosophical schools, are instinctively adherents of the school of natural law, although they might be as much surprised to hear this as was Molière's M. Jourdain when he discovered that he had unwittingly talked prose all his life.

Between such persons, and those who believe that law is a social instrument which men deliberately fashion to serve their purposes, or those who believe that it is a product of the entire social life and must needs change with changing social conditions, discussion is difficult.

It may be an irenic suggestion to say that each of these philosophical theories has in it a core of truth, but that, as none is wholly false, so none embodies the whole truth. There are conditions of social life and progress which are so essential that no legal system can disregard them, without imperiling the welfare and possibly the existence of the society which it governs. These conditions may be described as determined by nature. As far as they fit into the framework of law and are capable of statement as legal principles, they are appropriately described as natural law. Again: the coöperation on which human society is based is not mechanical, like that of the ant-hill; it is a coöperation of free individuals whose personality is not wholly merged in any group and whose interests are indeed subordinated but not sacrificed to group interests. The human type of coöperation is one that leaves room for competition; and social progress is largely the result of limited competition. The protection of human personality and of individual interests, the staking-off of fields of free competition—these are necessary conditions of social life among men, and they find expression in the so-called natural rights of the human being. On the other hand, the precise adjustment of social and individual interests is not, as far as we can see, determined by nature. It is determined in large measure by the historical development of societies; it changes, and apparently must change, as social conditions are modified. It is also determined, to a considerable degree, by

the human will. And when the conditions of social life and progress and the adjustment of social and individual interests are to be expressed in written laws and constitutions, the human will has complete freedom. The content of legal rules may be determined by nature or by history; their form is determined by human authority. It may then be conceded that, in a very real sense, there is natural law and there are natural rights. It does not follow, however, that any statement of this law or any formulation of these rights can be eternally valid. All such statements and formulations require continuous evolutive interpretation; and from time to time there will be need of restatements and reformulations.

DISCUSSION OF THE ADAPTATION OF WRITTEN CONSTITUTIONS TO CHANGING ECONOMIC AND SOCIAL CONDITIONS¹

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AS an advocate of labor laws, some of which have been held unconstitutional, I might be expected to dissent from Professor Goodnow's conclusions. Instead, my experience and observation, not, of course, as a constitutional lawyer, but merely as a student of labor legislation, cause me to agree with every important position he has taken. I believe, as he does, that judicial interpretation can and will adapt our federal constitution to our changing economic and social conditions. There is nothing in that instrument, as he has shown, which expressly bars the way to a thorough-going program of social and labor legislation. Where the way has been barred by decisions of the Supreme Court, as in the reactionary decision holding the ten-hour bake-shop law of this state unconstitutional, the cause has clearly been not in the constitution, but in the personal opinions and prejudices of the judges called on to interpret the constitution. To prove this contention it is necessary only to recall that in the case referred to four out of the nine judges, quite as able and learned-in-the-law as their colleagues, took an exactly opposite view of the meaning of the constitution. Moreover, it was a reflection on the intelligence of the American people to ask them to believe that their fundamental law, which had been held a few years before to permit the state of Utah to prohibit the employment of men in underground mines and smelters for more than eight hours a day, would not permit the state of New York to prohibit their employment in bakeries for more than ten hours a day. In all decisions involving the scope of the police power,

¹ At the meeting of the Academy of Political Science, October 26, 1912.

that is, the question as to how far the liberty of the individual may be curbed to promote the larger social interests of the community, we are clearly in the domain of fallible and changing opinion. Judicial opinion is only one segment—a conservative segment, no doubt—of general public opinion. As public opinion is aroused to industrial evils and voices itself in legislation regulating labor and other social conditions, judicial opinion will respond. In only a few instances, and then by bare-majority decisions certain to be subsequently reversed, has the Supreme Court of the United States refused to uphold measures consonant with the prevailing morality and the generally accepted opinion of the day.

While I agree with Professor Goodnow's conclusions, I should emphasize even more strongly than he has done the importance of the changes in our legal system which are necessary to make the process of adaptation by judicial interpretation work freely and easily. With the fourteenth amendment to the federal constitution given the broad scope which it now has, I should like to see the bills of rights amended out of the state constitutions all together. Private rights do not require the double constitutional protection which they now enjoy. The only important result of it is that labor and other laws which have good prospect of being upheld by the federal Supreme Court are often declared unconstitutional by the less able and less progressive state courts of last resort. If this proposal seems to go too far, certainly there can be no valid objection to making the machinery for amending a state constitution so simple and so ready in its operation that measures like the workmen's compensation act which was held unconstitutional by our court of appeals and which have public opinion overwhelmingly behind them, can be within a reasonable period expressly authorized by constitutional amendment.

The necessary corollary to machinery for the easy amendment of state constitutions is the other measure of which Professor Goodnow spoke, a federal statute permitting appeal to the federal courts whenever the interpretation of the constitution of the United States is the issue on which a decision turns. That appeal may be taken from decisions upholding

statutes and not from decisions declaring statutes unconstitutional is an anomaly in our present system which history may explain but which logic can not defend.

With state constitutions that may be easily amended and the right to appeal to the federal Supreme Court whenever there is a question as to what the federal constitution permits or does not permit, I believe we should be able to enjoy all of the advantages which come from written constitutions and at the same time largely escape the disadvantages, of which we have been made so conscious in the last few years.

(120)

DISCUSSION OF WRITTEN CONSTITUTIONS AND SOCIAL CONDITIONS

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IT is singular that among the various proposals to reform and improve methods of legislation the adoption, with appropriate alterations, of the republican government plan long in use in Great Britain, her dependencies and other countries, has not been more frequently advocated.

The cause is, seemingly, that our written constitutions in state and nation do not lend themselves readily to insensible, gradual modification, and when they were adopted, responsible government had not so far developed, even in Great Britain, that its true nature was comprehended.

Even at this day, while the parliamentary government of Great Britain is well understood by students of governmental theories, it is not understood by the mass of our population, though such a system has been in use for many years in Canada and its superiority is the boast of all Canadians. We are too prone to assume that responsibility of government to the voters prevails so generally that Americans must have understood and deliberately discarded it. Such is by no means the case.

Scarcely half the countries of Europe enjoy parliamentary government with a responsible ministry. The Norwegians separated from Sweden to obtain it. In Sweden and in Denmark, the voters are still struggling without success to wrest from the crown the right to hold the ministry responsible. Finland enjoyed this right till recently. In Germany, Austria, Russia, and other countries, responsible parliamentary government does not exist.

Except in the United States, however, it is found wherever free government exists; without excepting the United States, it may be said that it is found in every country where government is not frequently a failure, in failing to execute the policies

approved at the polls. Witness the complete breakdown of successive administrations at Washington and in our largest and most important commonwealths. It is not unusual to have the President or governor, with the veto power, at loggerheads with one or both houses of the legislature. As a result, there is little legislation—virtually none—which the people have passed upon at the polls and approved by putting in power that party which promised to enact it. Not only do we see a political party opposed to the executive in control frequently of one or both legislative chambers, but even when one party is in complete control of the government, it has so little sense of its responsibility to carry out its promises, that not infrequently the administration goes to pieces. Moreover, when this occurs, although at the commencement of an administration, the country must patiently await its end before it can change these conditions, and experience has shown that usually it exchanges one mechanism which will not work for another no better.

So intolerable has this become that a President or a governor of strong views and powerful character must declare his own policies and force them on a reluctant legislature under a pressure somewhat similar to the dissolution of parliament where responsible government exists, *vis.*, by a threat to appeal to the people, that is, to attack the legislators in their home districts before and after nomination, if necessary. This is certainly an awkward substitute for responsible government, in which the party and its leaders are held accountable without introducing anything foreign to the scheme of legislative government, such as executive interference which, however necessary, is rightly regarded as tyrannical.

Moreover such a plan is not practicable unless the executive has policies which he is determined to carry out, and the power to make an appeal to the people effective. Under responsible government, such a man becomes the leader of his party—the head of the cabinet when it is in power—and would retain his position so long as he retained popular support. Under the substitute for such responsible government which necessity caused Roosevelt, Hughes and LaFollette to introduce, we are compelled, in order to continue their effective leadership, either

to keep them in executive office indefinitely, or permit them to assume the rôle of political bosses when not in office; or in such an office as United States senator, which has nothing to do with state legislation, to have them dominate state policies by threatening to appeal from the legislators to their constituents. In brief, conditions are so complex, inarticulate and dissociated that this can scarcely be called a legislative mechanism, but merely the triumph of some powerful personality, a triumph achieved despite the want of machinery through which the leader's proposals may be given effect by the voter's approval.

It would be well if responsible government were tried in one of the more advanced states. It would solve our legislative problem if this could be brought about in the near future, so that, for instance, Roosevelt's wonderful qualities of leadership could be utilized to the full and his policies carried into effect if approved by the voters without the necessity that he remain President or that another man as President be compelled to pursue the legislative policy of a party leader out of office. It is a good rule which causes American voters to hesitate to confide the executive power too frequently to one man. But where responsible government exists, the head of the state is virtually powerless, except as an administrator with executive powers only; the legislative power includes the legislative policy of the administration, and all matters that require the consent of the legislature are entrusted to a cabinet, which must hold its confidence and retain its support or retire from office, or else dissolve the legislature and appeal to the people. Under such conditions, liberty is best conserved by continuing a leader in power so long as his leadership exists, instead of jealously guarding against his too long continuance, as is considered necessary if he is at the same time chief executive.

The solution of our governmental problems would be easier, could we keep at the front the strongest, wisest and best men throughout their entire lifetime, like Gladstone in Great Britain, instead of ending their influence upon legislation with their retirement from executive office. We not only waste the powers of our most serviceable citizens, but permit the complete breakdown at times of our legislative system as a means of carrying into effect the policies approved by the voters.

THE ISSUES INVOLVED IN THE METHODS OF SELECTING AND REMOVING JUDGES¹

HARLAN F. STONE

Dean of the Law School of Columbia University

WHEN our judicial system was established in the United States, two of its features were peculiarly adapted to its separation from political influence and activity. The general policy adopted in all of the states down to 1812 of appointing all judicial officers with life tenure of office was calculated to remove the selection of judges from political control and from the influences of the strife and passions of political campaigns. Their appointment for life or during good behavior removed the temptation to seek a new election or appointment as a reward for political or party service.

The other feature of our judicial system which has tended hitherto to keep the American judge from the political arena has been the fact that in the exercise of his power to interpret statutes or to declare statutes unconstitutional, he judges the law only in order to judge a case involving the rights of individuals. He does not appear in the role of an assailant of the law, nor, on the other hand, is his professional conduct as a magistrate in determining the law made even indirectly the occasion of reward or punishment by the electorate. As De Tocqueville stated in commenting on this fact:

It will be readily understood that by connecting the censorship of the laws with the private interests of members of the community, and by ultimately uniting the prosecution of the law with the prosecution of an individual, legislation is protected from wanton assaults and from the daily aggressions of party spirit.

He might well have added that the judicial interpretation of laws

¹ Introductory address as presiding officer at the meeting of the Academy of Political Science, October 25, 1912.

and the constitution was likewise protected by our judicial scheme from the direct political attacks of parties or factions.

The system of appointment of judges for life or during good behavior has long since been abandoned in most of our states. Influenced undoubtedly by the democratic tendencies which swept over the country in the first half of the eighteenth century, Georgia first, in 1812, in the case of its inferior judges, and Mississippi in 1832 provided for popular election of judges for limited terms. This method of selecting judges was rapidly adopted by other states, until at the present time I believe the only states retaining the appointive system are Delaware, Massachusetts and New Jersey. By this radical change in our polity the judicial office was cast into the arena of party politics and became potentially at least subject to influences which are wholly inconsistent with that sense of security and freedom which the founders of our government deemed essential to judicial integrity and efficiency. It is perhaps not within my province as the presiding officer of this meeting to attempt to comment upon the merits of the prevailing methods of selecting judges, but it may be permitted to me to say in passing that if there is any substantial basis for the current criticisms of our judges, the system of electing judges for limited terms has not been justified by its results. On the other hand, if our judges the country over were as distinguished for their learning and integrity as are the judges of Delaware, Massachusetts and New Jersey, where the appointive system still exists, there would be little occasion for the serious agitation over and discussion of our judicial system which now prevails. These are significant facts, which should arrest our attention at the very outset of our search for new methods of subjecting our judges to the control of the popular will. I therefore venture to express the hope that the papers and discussions to which we shall have the pleasure of listening this afternoon will turn the light of searching inquiry upon our existing method of selecting judges. With political, as with physical ills, the removal of the cause is likely to prove more efficacious than the application of remedies, especially if they are new and untried. It is to my mind a singular and noteworthy fact that this consideration has hitherto

applied.

played comparatively little part in the various aspects of the public discussion of our judicial system, and it is therefore especially gratifying to note that the first paper of the afternoon will be devoted to an examination of our system of appointing judges.

The censorship of laws, through the determination of the rights of individuals, with the consequent detachment, in practise, at least, of our judges from direct assaults upon or defense of our laws, has continued to be the method of squaring our legislation with the mandates of our constitutions, state and national. This device was believed by the founders of our political system to be, and has until recently been praised by political philosophers and writers as being the most powerful barrier yet devised against the tyranny of political assemblies and of popular majorities. Changing times and changing conditions have, however, brought change in opinion, certainly with a very considerable number of our political thinkers, and it is now insistently urged that the judicial interpretation of laws and constitutional provisions which some members of the community believe to interfere with social progress should be modified by subjecting the judicial function to popular control through the devices of recall of judicial decisions and recall of judges.

The recall of decisions, as it has been defined by ex-President Roosevelt, its most prominent advocate, as will doubtless be made to appear by the discussions at these meetings, is in its essence a form of constitutional amendment, and in practise will affect the judiciary in about the same manner and to the same extent as any other method of constitutional amendment by popular vote. The recall of judicial decisions, therefore, despite its somewhat misleading name, does not directly affect the judiciary, but rather is a scheme for a perpetual popular convention, by which the constitution may be made always to mean what a majority of the electorate wish it to mean. Whatever our views may be about the desirability of this method of constitutional amendment (and personally it seems to me an innovation which will be found to be impracticable in operation and fraught with danger to our institutions,) we shall be obliged to concede that its adoption would leave our judicial system in just about the

situation which it now occupies in our scheme of government, although it is to be feared that judges would not find the task of interpretation of our constitution any less perplexing and difficult after its provisions had been subjected to the process of amendment by the recall of decisions.

The recall of judges, however, vitally affects the position of the judiciary in our governmental plan. The recall of judges, if adopted, would be exercised, we may assume, either because the recalled judge is corrupt or incompetent, or because his view of the law does not agree with that of the electorate, or so much of it as takes a sufficiently active interest in the subject to go to the polls and vote on the question. In so far as we favor the recall as a cure for the corrupt or incompetent judge, I have already suggested the wisdom of careful inquiry directed toward the question whether our system of selection is the best adapted to prevent the recurrence of this evil. A second consideration should be whether, assuming the existence of a properly safeguarded system of selecting judges, the rare case of corruption or gross incompetency in judicial office under such a system could not be adequately dealt with through the process of impeachment. We should also inquire whether the right or privilege of recall would be likely to be wisely and justly exercised, so that only the corrupt and incompetent judge would be recalled, and finally, whether the recall would leave to the judge that freedom and independence which are essential to the maintenance of personal rectitude and to the exercise of sound professional judgment.

In the case of the recall of the judge because his view of the law or the constitution is not acceptable to the people, we subject, always potentially at least, the law itself, through the person of the judge, to "the wanton assaults and the daily aggressions of party spirit." The law itself, through its duly constituted mouthpiece, becomes the center and subject of political strife. The judge's position is changed from that of the arbiter of private litigation determining rights of individuals, unbiased by personal or political considerations, to that of the assailant, or defender, as the case may be, of the law or the constitution, and the soundness or unsoundness of his decision as the sufficient

reason for the continuation or cutting off of his official life becomes the subject of political controversy. Such a step is necessarily the great and final one, not only toward pure democracy, but toward shifting the law, wherever it affects in the same way any considerable number of people, from its semi-scientific basis, as developed by the skill and professional learning of the magistrate and of the legal profession generally, to a political basis, and its development in form and substance must be profoundly influenced by the determination of popular vote.

Such are in brief outline the issues, or rather the salient points which present themselves in any orderly and logical examination of the current discussions of our judicial system. How genuine are the faults with which our existing system is charged, whether the proposed changes are wise or unwise in principle—in short, whether they are worth the price we must pay for them—and whether they will work in practise, are questions which I shall leave to the speakers of the afternoon to answer. They will support their conclusions with appropriate arguments.

I shall take the liberty of introducing to you all three of the speakers of the afternoon at once; not only to avoid the usual unnecessary repetitions in performing that function, but in order that the harmonious development of the discussion may be jarred by no discordant note from your somewhat conservative presiding officer.

The paper on the elective and appointive methods of selection of judges will be read by the Honorable Learned Hand, United States District Judge for the Southern District of New York. Of Judge Hand it need be said only that any system of selecting judges which operates to select a judge of the learning, ability and fidelity of Judge Hand has much to commend it, and if a system could be devised by which all judges should be of like character and ability, there would be no occasion for this discussion.

Mr. Roe and Mr. Dougherty, who will read papers on the recall of judges, are well-known lawyers in this city, well qualified by experience and ability for the discussion of that subject. I suspect that the unconscious influence of environment

will be revealed in their respective papers. I do not know what their views are upon this important subject, but I know that Mr. Dougherty was born and has lived all his life in conservative New York. Mr. Roe, on the other hand, was for some years the law partner and associate of Senator La Follette, and must have imbibed progressivism in the very air he breathed, and so they are typical representatives of the two schools of thought on this subject, and we may look to them to present the views and strongest arguments of each with respect to it.

(129)

THE ELECTIVE AND APPOINTIVE METHODS OF SELECTION OF JUDGES ¹

LEARNED HAND

United States District Court, New York City

IN England the crown has from the earliest times appointed the judges, originally with no very definite limitation of their duties to functions now regarded as judicial. They remained subject to removal by the crown until 1688, after which time their tenure was during good behavior. One of the important causes which dethroned the Stuarts was their coercion of the judges, and much of the American feeling for an independent judiciary as the security of liberty undoubtedly goes back to that period and to the great English struggle for popular government, because the colonists were nearly all good Whigs and especially fond of the Bill of Rights. Nevertheless, it was George III, the apostle of absolutism, who finally secured the entire independence of the judges by providing that they should keep their commissions on the demise of the crown.

When the colonies came to make their constitutions, they generally accepted such institutions as they were used to, and most of them provided for the appointment of the judges by the executive. Yet even at the outset, in some states the elective principle obtained. Thus in New Jersey, Virginia and South Carolina the legislature elected the judges, and Vermont and Tennessee when they became states in 1793 and 1796 each adopted the same practise. Georgia has the distinction, good or bad, of being in 1812 the first state to elect any judges by vote of the people, though the change applied only to the inferior courts, and it was not till twenty years later that Mississippi, in a burst of democratic enthusiasm, became the first to elect all its judges by popular vote. Since that time this method has been very generally extended. The great state of New York,

¹ Read at the meeting of the Academy of Political Science, October 25, 1912.

which gave her laws to many of her younger sisters, followed in 1846 under the full tide of Jacksonian democracy, and has been consistently loyal ever since. To-day the process is complete except in some of the eastern states. The legislature appoints in Rhode Island, Virginia and South Carolina, while the governor, with the consent of the senate, appoints in New Jersey and Mississippi, the governor and council in New Hampshire, Massachusetts and Maine, the governor alone in Delaware, and the legislature on nomination of the governor in Connecticut. Thus, in three-fourths of the states to-day judges are elected by popular vote. It may be said that the institution of judicial election has hitherto generally been regarded by the American people as implied in a thorough-going democratic state.

To ascertain the effect upon the judiciary of elective selection is difficult without a good deal of research; perhaps it is impossible. Undoubtedly, the general opinion of the bar is in favor of appointment. I think there can be no impropriety in my saying that the federal judges have generally, in most parts of the country, a somewhat better reputation with the bar for ability than the state judges. Probably the greatest state courts have been in states which appointed their judges. Thus, Massachusetts has been easily pre-eminent over all other states in the quality of her judges, and for many years New Hampshire had a court which was hardly, if at all, second to that of Massachusetts. New Jersey has likewise an enviable record. However, the evidence is by no means all one way. Michigan for a while had a court of most distinguished reputation; New York, since 1846, has produced individuals of fine capacity, and Vermont and Pennsylvania have had creditable records. Besides, the problem is much complicated by other factors, especially the character of the tenure, of which more hereafter. For example, in by far the greater number of states the federal judges receive a larger salary than the highest state judges. Their tenure is for life and until about twenty years ago appeals, at least from the circuit judges, were so expensive and slow as to be practically impossible in ordinary cases. As a result, the position of federal judges in most states was more attractive in

every way than any place on the state bench, so that if the incumbents deserved or had a higher reputation than the state judges, it should not necessarily be attributed to the mode of their selection.

Again, in Massachusetts the whole administration of the state was for long on a decidedly higher level than elsewhere, and the character of the judges was very probably only a reflection of a generally better political tone. In New York, there certainly has been a great general decadence in judicial ability since 1846, due to a good many other reasons, I believe, than the election of the judges, and indeed, perhaps, not due to that at all. The evidence, therefore, would hardly justify one in going further than to say that the experience of sixty years seems to suggest a falling off in ability where the judges have been elected. How far this decline in ability has had to do with the present popular distrust of the judiciary as a whole, it is naturally impossible to tell. That it has perhaps had nothing at all to do with it is suggested by the fact that on the whole the federal judiciary is at present more jealously and suspiciously regarded than that of the states.

There remain *a priori* considerations, at best feeble supports for a conclusion. In the first place, one is tempted to say with Dana in the Massachusetts convention of 1853 and Chambers in the Maryland convention of 1851 that the mode of selection makes very little difference and that the same influences which control the caucus—or, as we should say, the party—will control the governor. There has been some corroboration of this in New York, whenever the governor has been in harmony with the local leaders; other experience I do not know. However, there have arisen governors from time to time who have been independent of the party, while they have not been strong enough to dominate it. Such men as Mr. Justice Hughes, for example, would have appointed, and did appoint, different judges from those whom either of the parties have as a rule put upon the bench. In short, in so far as a governor becomes independent of party influences we must expect that the result of appointment will be different from that of election, which is necessarily dependent upon party control. Have we a right to ex-

pect that this will become less or more frequent, and have we a right to expect that if it becomes more frequent, it will result well or ill?

The signs of the times, in so far as we can see, point to a decay in the party system. Direct primaries are a blow to it, little though they appear to be such superficially, because, while at first blush they serve to accentuate the division of voters into parties, they at the same time tend to destroy the influence of the permanent party leaders, as indeed present experience is showing and as the universal instinct of the leaders themselves foretold, though their speech denied it. Such primaries undoubtedly give a great advantage to the independent individual of taking personality, providing he can command enough money to secure publicity; they tend to minimize the influence of those who through the general apathy keep the control of nominating machinery.

If with a system of direct primaries there be coupled the short ballot, the governor's independence of party will be increased. Moreover, it would hardly be possible that direct primaries should continue without the addition of the short ballot, for popular interest would certainly not survive an appeal by several candidates for the many offices now elective. Indeed, the very apathy which has led to party domination in the case of minor administrative officers would frustrate a system of primaries for all such as are now elected. The system of direct election has broken down, because the people cannot be expected to know anything about the minor officers to be elected. Even less would they distinguish between the candidates for nomination to such offices. The success of direct primaries, even for the chief executive, depends in large measure upon the power and responsibility of that officer. The short ballot to-day commands the assent of substantially all parties, and is the proposal apparently most likely to succeed of all those at present prominent. It results in a consolidation of power which undoubtedly would not be accepted without some continuous popular control over the executive, but it is so obviously a necessary corollary to direct selection of the executive by the people that even the most thorough-going democrat will be

likely to accept it. That it should include the appointment of judges by the executive is most probable. A judge is an administrative officer, little as American traditions like to concede it; he is concerned only with the enforcement of the sovereign's will; and there is no reason why he should not be appointed by the executive, if other administrative officers are so appointed. The considerations which require his independence of the executive arise only after he is appointed to office; they affect only his indifference to pressure in individual cases, pressure which cannot be exercised in advance of their occurrence. If the short ballot comes, every reason for it applies to including judges within it.

In answer to the first question, therefore, we may say that there is good reason for supposing that in the future a directly nominated governor will appoint the judges, and that whether or not he has this power, it would, if he did have it, be under the control of influences different from those that have controlled election or would continue to control it if judges should remain elective. The distinction which Dana in Massachusetts and Chambers in Maryland could not see in the fifties would arise if the people became accustomed to choose their chief executives directly, whether by direct primary nominations or by direct election without party name or symbol and without preliminary nomination. There remains the question whether the operation of this change will affect the appointment of judges favorably or not.

While a governor elected by direct primary would be more directly responsive to popular feeling, since his continued possession of power would depend upon the popular approval of his personal conduct, his judicial appointments, unless scandalous, would weigh very little in the balance for or against him; for so far as we can judge, the personnel of candidates for the bench is a matter of almost complete indifference to the people at large. It is true that they become easily aroused over the conduct of an incumbent, but between candidates they usually, and quite rightly, assume the indifference of ignorance. Thus a governor would not have to reckon very seriously with present-day public opinion in his judicial appointments if he

avoided scandal. Because of the same public indifference, the party leaders need reckon, and have reckoned, but little with public opinion in the nomination of elective judges. This would remain quite as true under a system of direct primaries for judges, for it is hardly conceivable that primary contests between judges should arouse much public interest.

Assuming, therefore, that direct public interest in the matter, barring actually scandalous instances, must be eliminated, whichever the method of choice, have we reason to suppose that a governor, dependent upon the people, would do better or worse than the party leaders acting as it were behind the scenes? This question is of course not peculiar to the appointment of judges; it raises indeed the whole question of the working of the short ballot. An executive vested like the President with general power of appointment, but unlike him directly dependent upon the popular will for his selection, even while he may in the case of a single appointment have little to reckon with, does on the whole carry his record to the people, and it all goes together into a general pot which the people may or may not relish, as the flavor turns out. But it is also true that precisely the same responsibility rests upon the party collectively, and the party has the same incentive to act agreeably to the popular taste; it is moreover true that a party is after all nothing but a group of men, who enjoy power and wish to do what they can to keep it. Parliamentary government may be better or worse than a directly representative executive, but it is quite idle to consider parliamentary government for the United States, for any time that we can see. The real point with us is this: that is not parliamentary government which vests an uncertain power in the hands of unknown men who have no formal responsibility, so that the actual power is in fact unseen, and the individuals who exercise it do not themselves come before the public. A ministry is one thing, a cabal another. We cannot fail to profit by a change from appointment by cabal to appointment by a genuinely representative elected executive.

While, therefore, under the system which has actually existed, it is perhaps questionable whether appointed judges have been better than elected, there is good ground to suppose that under

a system of appointment by executives not dependent upon party, judges will be better than if chosen formally by an indifferent electorate, but actually by a group the power, influence and tenure of whose uncertain members cannot be definitely ascertained.

Strictly speaking, the subject of this paper does not include the tenure of judges, and a consideration of that subject certainly trenches somewhat upon the subject of the recall. Nevertheless, historically the method of selecting judges has been interwoven in constitutional discussion with tenure in such a way that it is really quite impossible to omit all reference to the latter. In the Maryland and Massachusetts conventions in the early fifties, the conservatives realized that the real fight was not as to whether judges should be elected or appointed, but whether they should be subject to political influence after taking office. All the arguments which now appear in relation to the recall were made with as much ability then as now. On the one hand the conservatives feared for the integrity of the judges; on the other, the democrats resented their absolute independence. There was no suggestion made of popular election for a term of good behavior and the institution does not exist in the United States to-day. In Massachusetts, New Hampshire, Rhode Island and Delaware at the present time the judges hold during good behavior; in the other states for terms varying from two years in Vermont to twenty-one in Pennsylvania. In Massachusetts judges are subject to recall by the governor on address by a majority vote of both houses, without charges or trial; in New York by a two-thirds vote of both houses on charges; and legislative recall is a common feature in state constitutions. The limitation of tenure which was so much feared a half century ago, therefore, has actually been brought about, and the judges are to that extent within popular control. Whether such limitation and control is desirable or not is quite another question.

The purpose of a limited tenure is of course to relieve the office of an undesirable incumbent, a purpose certainly wise and commendable. There are two grounds for removing a judge: first, that he has actually misconducted himself in ways which

may be specified and proved; second, that he has shown himself undesirable in respect to his ability, his political or economic bias, or that vague range of conduct which we group together under temperament. Fair play and the general experience of most civilized peoples require for the first cause something in the nature of charges and proof; this would indeed meet with very general approval. It is as to action on the second ground that difference of opinion arises. One party insists that since the judge has no right to regard any popular expression except what has already obtained formal authoritative expression, therefore to make him answerable to public opinion is to put upon him an influence which cannot possibly operate except to corrupt his integrity. For popular opinion, intent upon its as yet unexpressed purpose, will forget that it is the judge's duty to regard only what has already received expression. The other party insists that though the judge is unquestionably limited by the existing authoritative expression of the public will, so also are all other administrators of law, as to whom immunity from popular control is not thought necessary. Further, it is insisted that there is no practical line of distinction between interpretation and legislation, whatever may be the case dialectically. Even the most carefully drawn statute leaves room for alternative construction and to choose between two constructions is in effect to legislate. Further, in the interpretation of the broad phrases of the constitutions, and in the treatment of precedents, just as they did in developing the common law from the register of writs, the judges are legislating, building up a customary law which is as much their creation as any statute is that of the legislature. This power, it is said, the people have come to recognize as giving so wide a latitude to judicial conduct that in a democracy it cannot be immune from some popular control, from subjection to the dominant political convictions of the time. While such control is a dangerous thing in that it may twist the conscience of a judge into pretending there is an ambiguity of expression where there is none, nevertheless it is more dangerous to leave such broad power in the hands of men in no way responsive to popular control.

It is practically quite idle to discuss the comparative value of these lines of argument, if the issue be absolute independence, because it is certain that looking forward to any time we can now hope to influence, the American people will not give up some control over judicial tenure. The consistent tendency of sixty years is if anything stronger to-day than it has ever been before. It is quite useless to consider how often any genuine ambiguity of expression really exists, and whether a sympathetic effort to reassume the position of the legislator or of the preceding judge will not generally solve the problem. The people believe that the usual judge has not the detachment of will which makes this possible for him, and that he will inevitably carry some bias to the problem. I may say that my personal experience with judges quite corroborates that belief. The people have hitherto attempted to correct a bias contrary to the popular will temporarily dominant, by bringing up the judge for examination at stated intervals. They will desire to continue to exercise this control in some equivalent way.

Therefore the question arises, if the judges become appointive in the way I have suggested, what shall be their tenure? Is the governor to appoint them for stated terms during which they are independent? Is he to appoint them on good behavior subject to legislative recall? Is he to appoint them for stated terms subject to legislative recall? Is the action of the legislature in the matter of the recall to be subject itself to a referendum? Is there to be an immediate popular recall? Starting with some popular control over the tenure of judges, which must in any case be the price of the surrender of the power to elect, what is the most desirable plan? This, it seems to me, depends very largely upon the degree to which constitutions are to check the will of the majority. Fixed terms operate for their earlier part to remove the judge from the pressure either of persons or of popular ideas; as they run out they subject him to both. An indefinite tenure, with popular power to recall, substantially removes a judge forever from personal pressure, while it continually subjects him to popular ideas. In so far as the constitutions check the popular will, his integrity is certainly menaced; in so far as by referendum or otherwise the dis-

inction between the constitution and the popular will is lessened his integrity becomes safer. Yet even in the first case, the protection is not great. Judicial terms in the United States do not on the average exceed six or eight years, I believe. If the judge is to retain entire independence through his term, that term will not be lengthened, and popular memory is likely to last for two or three years.

We may sum up the positions, therefore, as follows: Any limitation of tenure should be objectionable to those who set great store upon constitutional limitations of the immediate popular will, who chiefly dread, in the classic language of American conservatives, the rule of the mob. It is true that to them the present system of fixed terms should be monstrous in that for a substantial period it menaces the judge's constitutional integrity; but in so far as it gives him some measure of independence of popular pressure it is good, even though it submits him also to dependence on persons as his term runs out. To those, on the other hand, who look for a more ready expression of popular will, the fixed term has no advantage in giving independence of popular feeling, while it has the great demerit of subjecting the judge to personal influences. Continuous power to recall eliminates the latter, while a more plastic system would greatly lessen the number of occasions when the judge would come into conflict with such a determined popular feeling as he should fear. To the latter class, therefore, some form of recall is better than fixed stated terms. What, then, is the price which must be paid if terms are to be extended to good behavior—who is to judge that good behavior? Shall it be the governor, the legislature, the people or any combination of the two? A recall by the governor would rather perpetuate the evils of appointments for fixed terms; it may be dismissed. There remain legislative recall, popular recall, and a combination of the two. Legislative recall has been in force in Massachusetts and in many other states for over a century and has been seldom resorted to, though it was used once in Massachusetts most unjustly. It has the advantage of being already customary and of giving better opportunity for preliminary discussion and for recognition of the fact that a judge may have been led to an

undesirable result merely from loyalty to his duties, merely from unwillingness to usurp authority. Nevertheless, if the matter ended with the legislature, it would be no equivalent for the surrender of direct popular control now exercised through fixed terms, and I think it quite clear that the people would not accept it. Moreover, in a state where there was a referendum upon legislative action generally, it would be unlikely that this legislative action alone would remain unreviewable. If the people could review the legislative action, however, there could be no just objection that full control over judges was lacking; it would not be too speedy, but it would be effective.

In conclusion, therefore, we may say that under a system in which the importance of constitutional limitations is not strongly felt because the institutions easily reflect popular feeling, the practical conservative position would be to appoint judges on indefinite terms, subject to recall by the legislature, with referendum to the people, and that this is a thoroughly democratic institution. The radical position would be fixed terms with immediate popular recall. The intermediate position would be indefinite terms with immediate popular recall, from which the judge's position ought, I think, to exempt him. It is not unreasonable to insist upon that opportunity for discussion which the preliminary action of the legislature would insure.

THE RECALL OF JUDGES¹

GILBERT E. ROE

New York City

I do not advocate the recall of judges as a means of correcting all judicial abuses. I do not think it would revolutionize courts, and I do not think that the recall should be applied to judges until it is applied to all other public officials. The position of those who advocate the recall of judges simply is that when the people in good time and in their wisdom, if wisdom it is, have decided to bring public officers generally under the control of the recall, no distinction shall be made in the case of judges. The issue, so far as there is an issue on this question, is between those who say that a distinction should be made in the case of judges, that reasons exist why the recall should not be applied to judges when it might be perhaps successfully applied to other officials, and those who hold that no such distinction should be made.

If there ought to be any distinction, in my judgment it would be in favor of applying the recall to judges rather than to many other public officials. Here is my principal reason for saying this: the judges, more than any other class of officials, ought to be close to the public if they are going to perform their proper function in this government. The President, with his control of the army and navy and the vast influence which he has the means of exercising, may be able to carry forward a policy for a time without popular support; the legislative branch of the government, with its control of the finances, also is measurably independent of the people's will; but the courts have no army and navy, no control of the finances; they must depend for their support upon the approval of the people of the country, or they must fail in their function. Therefore I say

¹ An address delivered at the meeting of the Academy of Political Science, October 25, 1912.

that whatever brings the judge and the people closer together is in my judgment a good thing, and that is the reason—one of the reasons, at least—why I advocate the application of the recall to judges.

The recall would be a good thing not only for the judge and his decisions, but for the people themselves, and after all that is the real reason why we want any of these democratic measures. I am not at all sure that where there are direct primaries better candidates have been nominated than under the old system, but I do know this, that it has been a good thing for the people; the discussion, the agitation, the education, the interest excited has laid broad and deep the principles of democracy in those communities, and that is why it has been good. And I believe the same thing will be true of the initiative and referendum.

I was impressed with one or two things that the preceding speaker said, and the unconscious way in which he said them. Perhaps it was the intentional eloquence of understatement. He spoke quite as a matter of course of the dissatisfaction existing on the part of people so far as the courts were concerned, indicating that there was not the trust and confidence existing between them that should exist. Again, he said that the people were almost wholly indifferent to the character of a candidate for judicial office but were very alert as to the acts of the incumbent of that office. Both those expressions are true, and both thoughts relate directly to the subject of the recall of judges. That there does exist in this country to-day a widespread distrust of the courts—not of individual judges merely, but of the courts and their purposes, and a dissatisfaction with the result of the work of the courts,—is a fact that we must all admit. I have tried to analyze somewhat the basis or reason for that dissatisfaction, and as briefly as I can I want to tell you my conclusions about it.

Since the foundation of this government, the people have been reaching out and gaining more and more complete and direct control over both the executive and the legislative departments of the government. You know that the constitution provided for the device of an electoral college because it did not trust the people, because the framers of the constitution

were unwilling to commit to the mass of people the important function of electing the President of the United States. Then also it was felt necessary that one branch of the legislature should represent the wealth and financial interest of the country, hence the provision for electing United States senators by state legislatures and electing them for long terms. At once the people set about destroying these barriers, and so they found a way to get around the electoral college, and to abrogate the constitutional provisions providing for the election of United States senators by state legislatures.¹ The direct primary is another step in the same direction, so that more and more all through the years from the time the constitution was framed to this moment the people have been seeking and securing more complete control of the executive and legislative branches of their government, bending these officials more completely to their will, and as I think, properly so. But that is not the question at this moment.

With the judiciary just the opposite course has been pursued, or rather the judiciary has traveled an opposite road. With a constitution that gave so little power to the Supreme Court of the United States that John Jay, the first Chief Justice, resigned, because he said there was not power enough in the office to make it worth a man's time to hold it,—starting out from that point and coming down to this time the courts by their decisions have removed themselves more and more from popular control. I am not going to enter on the discussion of the question whether the constitution granted to the court the right to declare a law unconstitutional; it is my belief that it did not. That question is one of the most interesting in all our history. But we all agree upon this, that when the doctrine was first announced that a court could declare a law unconstitutional, always that announcement was coupled with the expression that it was a power so dangerous for a court to exercise, so dangerous to what we call popular government, that a court would never exercise it except in a case that was free from all doubt. When you put a statute side by side with the written constitution and it was perfectly plain that the two were in conflict only then could the court say that the statute was unconstitu-

tional and must fall. Everyone agrees that that was the position the court took when it first announced the doctrine. But today, so far have our courts got away from that old landmark laid down by Marshall and other great judges of that day that no one knows to-day, when a legislature or the Congress passes a law, whether it is law or not until it has been passed on by the courts. We have often found of late years, when it has been sought to remedy some great abuse, as in the income-tax law, the workmen's compensation acts, employers' liability laws and many others, that there has been built up a great body of public sentiment in favor of the law, and then that public sentiment became so strong that it could knock successfully at the doors of a legislature or the Congress and command attention there. So after long days or weeks or years of discussion the law was passed by the Congress or a state legislature, each body containing many of the most eminent lawyers of the state or nation, every objection possible having been brought up and discussed and answered and provided for, and then the law went to the President, who had the benefit of the advice of the ablest minds of the country, and he signed it, and it was written on the statute books. After all this, the day comes to enforce this law, and you go into court on it and the question is all argued out whether it is constitutional or not, and the court thinks it is. Then there is an appeal to the next court. The next court thinks it is, and perhaps that involves a decision of four or five or six judges, all holding it constitutional. Then another appeal is taken to a little higher court, and perhaps here three judges out of five say that it is not constitutional, that it shall not stand. So then you have the word of three men against all the wisdom of the lower courts, of the President, of both houses of Congress and of the people—and your law falls.

Because that thing has happened in this country within your memory and mine not once but many times, not on unimportant matters, but on matters that touch vitally the lives and the happiness of the people in a majority of the homes of this country, because laws of the kind above referred to have been stricken down and destroyed, because three or four men clothed

with judicial authority have set themselves up in opposition to the will and intelligence of the rest of the country, because of this there has been a demand on the part of the people to bring these judicial officers more completely within their control.

The result of bringing them within the popular control would be good for the judges and good for the people. We lawyers are a good deal to blame about the mistakes that judges make. If the first speaker had been elected to the United States Senate at the time he was appointed to the bench he would have brought just the same integrity, ability, conscientiousness of purpose and fidelity to the one set of duties that he has brought to the other,—and yet in public estimation how different would his position be. We feel that it is anybody's privilege to go out and praise or criticize or discuss the members of the United States Senate or House of Representatives, and the result is on the whole the establishment of a very good feeling between the people and the members of the law-making branch of the government; but when a man goes on the bench we have been taught to feel that he goes into a different realm, that his acts must not be discussed, his conduct must not be brought under criticism. I do not believe that that is a right view, but I say we lawyers are largely responsible for bringing about the false sentiment on that question, and the thing that would do most to correct that is the recall. Make your judges and their actions the subject of discussion; let the people talk about them, and not be fined for contempt of court if they do talk about them; let us discuss what the judge does just as we discuss what the member of Congress does.

It was said that the people are apt to know nothing about the character of the candidate for judicial office and to be indifferent to it. That is why I would have the recall and would have a life tenure unless the recall was exercised. In the hurly-burly of an election there are many candidates and many issues, the record of any particular candidate is lost sight of. But in a recall election the man and his conduct stand out; it is the one thing you are considering. There has been in this country just one attempt to recall a judge; that was in Oregon in 1911. A judge there presided at a murder trial in a

very unpopular way, making such rulings that the man charged with the crime escaped conviction. A considerable part of the community believed that the judge's decisions were wrong, and that they argued such corruption or such incompetency that he ought to be removed. So they started out to circulate a recall petition. As you know, every state that has a law providing a recall, safeguards it so that several months must elapse between the filing of the petition and the election. In this case it was necessary to get twenty-five per cent of the voters of the district to sign the petition that a recall election be held. The law also provides that each side shall at the public expense state its reasons why the recall is demanded on the one side, and why the judge should be continued on the other. After that the election is to be held some months in the future. The people in Oregon did not take even the first step, although the case appeared a rather flagrant one. They could not get anywhere near the twenty-five per cent necessary even to submit the question to another election. But, you may say, if a recall would be so seldom exercised, why do you advocate it? For just the reason that if there is the power of recall, if the people feel that they have control over the judge, and the judge feels that he is really the servant and not the master, then you will have a condition which will make the recall unnecessary except in rare instances and at long intervals.

SUBSTITUTES FOR THE RECALL OF JUDGES¹

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AFTER almost two years of discussion does anything remain to be said in favor of judicial recall? No public question in recent years has received more consideration. It has been the theme of debates, pamphlets, books and resolutions. Practically all the bar associations throughout the country have opposed it. The debate in Congress upon the admission of Arizona with its constitutional provision for judicial recall was so exhaustive as to leave nothing to be said. The speeches of statesmen like Root and Lodge in the Senate, and Pickett, Kinkaid, Legare and others in the House, conclusively showed its fallacy. President Taft's veto message, a great state paper destined to rank high in history, thoroughly shattered the notion. The vote upon the Arizona bill in the Senate and the House would be completely misunderstood were it assumed to represent a preponderant sentiment in favor of judicial recall. Many senators and representatives to whom the idea was repugnant voted for Arizona's admission because they felt that the state itself had the right to determine whether it would instal such an unwise policy or not. A few opponents of the measure believed, as did President Taft, that such a revolutionary doctrine was subversive of republican government.

Judicial recall has been abandoned by some of its most conspicuous advocates and the notion of recall of judicial decisions substituted for it. Thus Colonel Roosevelt who, two years ago, in describing judges as "fossilized minds" asserted that judicial recall might become advisable, now advocates recall of judicial decisions. Two recent critics of our judicial system, Mr. Gilbert E. Roe and Mr. William L. Ransom, differ so radically

¹ Read at the meeting of the Academy of Political Science, October 25, 1912.

that the arguments of one may well be set off against those of the other. In his interesting book entitled *Our Judicial Oligarchy* Mr. Roe regards judicial recall as the remedy to prevent the courts from usurping powers which according to him they do not possess. Mr. Ransom, on the other hand, while equally alarmed at what he conceives to be judicial usurpation, invokes the remedy of recall of judicial decisions. No one has more incisively refuted judicial recall than has Mr. Ransom, and no one has better shown the fallacy of the recall of judicial decisions than has Mr. Roe.

Of judicial recall Mr. Ransom says:

If a judge incorrectly gauges "the preponderant opinion" as to the social necessity for a particular law, why remove him? Why not let the people vote directly to decide what the majority opinion is? If a judge is dishonest, impeach him; if he is incompetent, remove him by complaint before the legislature or refuse him re-election, but it does not seem quite fair to require him to take the final guess as to what the "prevailing morality" and the "preponderant opinion" of a state really is, and then chop off his judicial head if he "guesses" or "calculates" wrong.

For Mr. Ransom's specific Mr. Roe, on the contrary, has the scantest respect. He says:

The recall of judges is to be carefully distinguished from another idea, which is supported by some men of prominence, and which has come to be described as the "recall of judicial decisions." The former may be applied without materially departing from our constitutional form of government; the latter is absolutely destructive of the constitution. The recall of judges merely means that where a judge has shown from any cause that he is not discharging the functions of the judicial office in fundamental and important matters as the people desire, he will be discharged and a new judge possessing the necessary technical qualifications selected in his place. The recall of judicial decisions means that the wholly untrained layman shall undertake to do, personally, the highly specialized and technical work of a judge. The great vice in this idea, however, is that it would be used as a means of amending the constitution by a majority vote. It would soon come about that laws would be passed, simply for the purpose of having them declared unconstitutional, and then by a popular vote overturning the de-

cision of the court, and in that respect amend the constitution. The constitution, therefore, would be immediately reduced to the level of a statute, since any portion of it could be amended, or repealed, at any time by a mere majority of the popular vote. While there is little likelihood of this idea finding a permanent place in the minds of the people, that anyone should be found who seriously advocates this idea is significant of the extent to which the dissatisfaction with the courts has gone, and ought to show the necessity of reforming the courts, along lines less revolutionary.

Mr. Ransom has Colonel Roosevelt on his side. Colonel Roosevelt has written an introduction to Mr. Ransom's book in which he declares that the people ought to have the power to decide for themselves in the last resort what legislation is necessary in exercising the "police" powers, or "general-welfare" powers, so as to give expression to the general morality and the general or common opinion of what is right and proper, and he is careful to say that he is advocating a system which "will obviate the need of such a drastic measure as the recall." What Colonel Roosevelt seems to overlook is that the people to-day enjoy ample power to change their constitutions so as to secure whatever legislation they may desire in the interest of the public welfare.

Thus those who think judges usurpers and oligarchs are divided into two hostile bands. One would introduce judicial recall as the remedy, the other would have the people recall the judicial decision by popular vote, and each stigmatizes the other's panacea as in the last degree dangerous and unwise.

Surely after all the discussion upon this subject, argument can hardly be needed to show the unwisdom of judicial recall. As I view it, the proposal is based upon two fallacies:

First, it is declared that the judiciary has transcended its functions in passing upon the constitutionality of legislation, and that the judiciary is the undemocratic and unprogressive branch of the government. These things are asserted as to the judiciary not only of the nation but of the several states; yet in the majority of the states the judges of the higher courts are elected by popular vote, and, in many instances for short terms.

Second, it is held that the courts, instead of attempting

to follow the constitution which they have sworn to support and to which every statute should conform, ought, on the contrary, to uphold a law in conflict with the constitution, if that law expresses the popular will, thus substituting the popular will, or as it has been called, the "manifest and express will of the people" for the constitution as their guide in certain classes of cases—this class being cases affecting the social conditions of the whole or a part of the community. According to this view, it is not the constitution but the so-called "popular will" that should be regarded as the law of the land.

As I read history the courts have not usurped the power to declare legislation unconstitutional. To say that the judiciary is the unprogressive branch of the government is merely another way of saying that it is the business of the judges not to make law but to declare it, and in this sense the judiciary is the most conservative branch of the government. The courts say what the law is, not what they think it should be, and as constitutions are in theory at least easily amendable, the law can readily be so modified by amendment as to express the most enlightened public sentiment. The public will is presumably expressed in the constitution. The constitution must remain the supreme law until the people see fit to change it, and certainly in the states the power of amendment of the constitution is easily available. In New York state the constitution is, if anything, too readily amendable. The constitution thus represents the "popular will" for the time being, and to attempt to substitute something else as an expression of the popular will by an unconstitutional method is in reality to subvert the popular will.

Even granting all the charges that of late have been made against the courts—and I am personally willing to concede that in some instances the courts have seemed arbitrary and unjust and judges have been selected as a result of improper influences—I maintain that recall is not the remedy for any error in a judicial decision.

The recall would undermine judicial independence. After all that has been said in Congress and elsewhere it is unnecessary to show that a system which makes the judge liable to

removal, not for breach of duty, but upon the mere arbitrary determination of any power, whether a king, a legislature or the people, is destructive of manliness, integrity, and independence of character. As President Taft has well said, no self-respecting man would accept judicial office with such a sword of Damocles hanging over him.

The recall would inevitably fail. If I wished to pack the bench of this state with the tools of bosses, or the instruments of the great, powerful and wealthy interests that too often dominate legislatures and courts, I would strongly advocate judicial recall. Unscrupulous combinations with large funds at their command could use this power for the removal of the incorruptible judge. It would be a weapon that could readily be turned against the people in behalf of special interests, and nothing could be more dangerous to the popular welfare.

Recall is a species of punishment; it implies dissatisfaction. To my mind there is something inherently wrong in punishing a judge for the expression of an honest and intelligent opinion. I can understand punishment when a person does wrong, but to punish one who with ability is presenting his own best convictions, is, to my mind, an utter absurdity. The bench should be composed of lawyers who express their convictions, not mere popular instruments. The recall was applied by James II of England, when he dismissed the Chief Justice of the Common Pleas and his associates, because they were unwilling to give a judgment that accorded with the royal will and not with the law. Jones, the Chief Justice, had been abject, even servile, but when told by the king that he must give up either his opinion or his place, answered: "For my place I care little; I am old and worn out in the service of the Crown, but I am mortified to find that your Majesty thinks me capable of giving a judgment which none but an ignorant or a dishonest man could give."—"I am determined," said the king, "to have twelve judges who shall be all of my mind as to this matter." "Your Majesty," answered Jones, "may find twelve judges of your mind but hardly twelve lawyers." The king dismissed him and his associates. This is what would happen with

judicial recall in force. Judges would seek to know the popular will and to follow it, which would be subversive of jurisprudence, and in turn of the rights and liberties of the people themselves.

Assuming that there are errors in the present administration of justice which need to be corrected, assuming that judges have encroached upon the legislative branch of the government and constituted themselves a species of upper house to veto legislation by substituting their opinion for legislative opinion, the remedy does not lie in the recall of judges or in recall of their decisions. On the contrary, the remedy is far simpler, more efficacious, more wholesome, less subversive and revolutionary.

In the first place, compel judges to return to the sound, old-fashioned notion that no law may be held unconstitutional unless it clearly transcends legislative power. It is a travesty to assert a law plainly and palpably unconstitutional which five judges out of a bench of nine consider unconstitutional, while the remaining four believe it within legislative authority. A statute which three judges out of seven or four judges out of nine deem constitutional is not plainly and palpably unconstitutional, and no court by any vain show of reasoning can make it appear to be so. Whenever there is doubt of the validity of a statute, the courts, as the late Mr. Justice Harlan of the Supreme Court admirably said, "*must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation.*" If the economic wisdom of a legislative measure fails to meet judicial approval, that is no reason why a court, particularly a divided court, should declare the statute repugnant to the constitution. If the judges cannot agree that the law violates the constitution, the law should stand. The true theory was never stated better than by Mr. Justice Iredell, one of the earliest members of the United States Supreme Court, and Iredell, quite as much as Hamilton, was a staunch advocate of the duty and power of the judiciary to declare unconstitutional laws that were repugnant to the fundamental law of the land. As far back as 1798 Iredell said:

If any act of Congress or of the legislature of a state violates those constitutional provisions, it is unquestionably void ; though I admit that as the authority to declare it void is of a delicate and awful nature, the court will never resort to that authority, but in a *clear* and *urgent* case. If, on the other hand, the Legislature of the Union shall pass a law within the general scope of their constitutional power, the court cannot pronounce it void merely because it is, in their judgment, contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard ; the ablest and purest men have differed upon the subject.

If necessary, I would favor an amendment to every constitution depriving the judges of power to nullify laws by a majority vote. A constitutional provision might be thus formulated: Judges shall have power to declare statutes unconstitutional only when they plainly violate an express provision of the constitution and then only by unanimous or greatly preponderating vote.

Second, I would so amend the national judiciary law, or if necessary the federal constitution, as to permit a review in the highest tribunal of the nation of every statute involving the due-process-of-law clause, whether the statute was upheld or abrogated by the state court. The guarantee of due process of law is the same in words—in any event it is identical in meaning—in the national and the various state constitutions. Had the judiciary act permitted, the *Ives* case, which according to the New York court of appeals offended against this clause of the state and the national constitution, would have been reviewed in the United States Supreme Court. With one final tribunal to determine whether any statute, state or federal, conflicts with the due-process clause, there will be evolved a clear definition of the clause ; there will also be harmony in decisions. Furthermore, in every case involving this provision, attention will be centered upon the court that possesses this final authority. The guarantee of due process of law may have been distorted and extended far beyond its original meaning, as some claim ; yet, on the other hand, the words of a constitution must be fluid, and no meaning once assigned can control the signification of the words if new circumstances give them a new meaning.

Every interest which regards its property as unjustly affected, or perhaps confiscated, by a statute the purpose of which is social improvement, has a right to be heard, but all such statutes should be brought to final test before the Supreme Court of the United States. That court is to-day more progressive than any state court of elected judges—a fact that tends to show the fallacy of judicial recall. Judges entrenched in office for life, and therefore immune from recall except by impeachment, have been found more favorable to legislation designed to secure the popular welfare than judges elected and subject to recall at fixed intervals.

Third, to avoid the danger of the creation of an utterly irresponsible bench, I would favor the freest criticism, consistent with decorum, of judicial decisions and especially of judicial conduct, and make impeachment and removability for cause real remedies. Every judge ought to discharge his duties under the shadow of possible impeachment. Impeachment could be made a live remedy. Its tedious and elaborate processes should be abolished. Let a judge be put on trial on the complaint of an association of lawyers or of any other responsible civic body. No servant of the people should enjoy immunity from removal for cause. Our political inventiveness is atrophied indeed if we cannot devise methods for the fair and expeditious trial of judges, without resorting to recall. With proper publicity judicial removal would rarely be necessary. The bar and the public should be stimulated to make all reasonable complaints so that the record of judges could be followed. A judge should be removable not merely for one specific offense, but for a generally poor and unsatisfactory record.

The greatest evil is an elective system which permits bosses and machines to nominate judicial candidates and place upon the bench men of inferior calibre and feeble morality. An elective system naturally puts availability or activity in politics, and not fitness and integrity, in the foreground of qualifications. I would return to the appointive system and have every judge hold office during good behavior—which should mean good behavior. If deemed desirable, judges should at periodic intervals, say of five or ten years, be compelled to pass ex-

aminations to prove that they possessed the qualifications for their great position. Every judge whose conduct fell below the high standard which the community has a right to prescribe for a judicial officer should become subject to removal. Every judge whose use of judicial patronage indicates subserviency to an organization or a boss should also be subject to removal.

If the frontiers of judicial power are not properly defined, let us define them. I for one am convinced that in the nature of things courts must construe statutes and decide whether they conflict with the fundamental law. Some authority must be established to interpret legislation and to determine whether an act of the legislature is within the legislature's power; otherwise the legislature becomes supreme—even over the constitution. But to recall a judge for the expression of an honest and intelligent conviction is to my mind unthinkable. It would put a premium upon judicial insincerity and sycophancy. Curtail the power of the judiciary if after full deliberation that seem to be wise, but never do anything to weaken the judge's independence, his immunity from responsibility for every act not legally or morally reprehensible.

The problem is how, while retaining a tenure during good behavior, to insure prompt accountability and removability for cause. But the proposal to recall judges for unpopular decisions would, as President Taft has well said, be "nothing less than a proposal to abolish courts. To abolish courts is to abolish freedom. However innocent the motives of those who propose the measure, no deadlier blow was ever aimed at the heart of human liberty than this. The people have only to understand it to reject it."

To those who will not heed President Taft's wise words, let me cite the opinions of a great English economist, statesman and political philosopher, John Stuart Mill. In his well known work, *Considerations on Representative Government*, Mr. Mill presented the following cogent and conclusive reasons against judicial recall:

If a judge could be removed from office by a popular vote, whoever was desirous of supplanting him would make capital for that pur-

pose out of all his judicial decisions ; would carry all of them, as far as he found practicable, by irregular appeal before a public opinion wholly incompetent, for want of having heard the case, or from having heard it without either the precautions or the impartiality belonging to judicial hearing ; would play upon popular passion and prejudice where they existed, and take pains to arouse them where they did not. And in this, if the case were interesting, and he took sufficient trouble, he would infallibly be successful, unless the judge or his friends descended into the arena, and made equally powerful appeals on the other side. Judges would end by feeling that they risked their office upon every decision they gave in a case susceptible of general interest, and that it was less essential for them to consider what decision was just, than what would be most applauded by the public, or would least admit of insidious misrepresentation.

He thus presents the pith of the whole question :

The question however, is whether in the peculiar position of a judge and supposing that all practicable securities have been taken for an honest appointment, irresponsibility, except to his own and the public conscience, has not on the whole less tendency to pervert his conduct than responsibility to the government or to a popular vote.

To resort to judicial recall would be to flee to evils that we know not of. How many persons have tried to imagine what would be the procedure under such a system and how unlikely it is that a judge would be recalled upon the real issue? It would be unfortunate to have more questions thrust upon the people for determination when they already vote upon too large a number. Some critics of the bench think that the judges have become policy-determining officials. If so, recall would be no remedy. I have tried to point out some feasible methods which would avoid anything so ruinous as the recall of judges. If we set about it in earnest we can readily make impeachment or removability for cause such vital procedures in the elimination of improper judges that there will be no occasion for the recall.

DISCUSSION OF THE SELECTION AND REMOVAL OF JUDGES¹

RICHARD S. CHILDS, Secretary of the Short Ballot Organization:

As secretary of the Short Ballot Organization I have, of course been obliged to consider with great care the question of whether in the process of shortening the ballot and transferring minor elective offices to the appointive list, the judges also should be made appointive. The working rule which we use is this: When a given office is on the elective list, does it normally attract sufficient scrutiny to protect it from contamination? There is no question as to whether the people ought to look more sharply at these offices. The question is, after two generations of trial, *do* they look sharply enough at the candidates for these offices to compel good nominations? We know that in the case of conspicuous officers like the governor or mayor, public scrutiny compels the politician to nominate better candidates than he wants to, better candidates than he does nominate for minor offices where he has his own way.

Does it work this way with judges? I think not. I offer as a fair demonstration the case of the so-called judiciary nominators in New York city, who put a ticket of judges in the field a few years ago when the number of judges to be elected was unusually large and when such leadership as this should have been much in demand. The judiciary nominators put up a first-class ticket and practically the only votes received by their candidates were those secured through the endorsement of other parties. In spite of heavy advertising, in spite of a splendid ticket, they were unable to make a dent in the public consciousness in the matter of judicial nominations. An adverse report made by a bar association on a given nomination makes absurdly little difference in the election, and the report is forgotten in two days. My present audience, cultured and

¹ At the meeting of the Academy of Political Science, October 25, 1912.

intelligent as it is, contains only a small percentage of citizens who can name, to say nothing of describing, the judicial candidates of the several parties at the coming election. The average citizen does not know what judicial offices are to be filled or who the candidates are.

The experiment of having judges on the elective list has therefore failed, inasmuch as it has led in practise to control by professional politicians rather than control by the people. The judges, therefore, must be taken off the elective list and made appointive by the people's governor, in order to bring their selection under popular control. The average radical will froth at the mouth at this suggestion, but he is wrong and I am right,—the appointive way insures closer popular control than direct election does. Taft, Wilson and Roosevelt are all frankly in favor of the appointive rather than the elective method.

Current popular discussion regarding the judiciary makes propaganda work for an appointive judiciary seem hopeless, and the short-ballot movement is contenting itself for the present with placing emphasis on the desirability of the selection of minor administrative officers by appointment instead of election.

There are two things that can be urged, I think, as hopeful compromises. There are two classes of judges, those who are expected to legislate and those who are not. The former are considered policy-determining officers, and in the minds of many people, should be kept elective, at least until the evolution of something like the recall of decisions diminishes their policy-determining authority. There can be no argument, however, about the non-legislating judges and magistrates, and the popular opposition to putting the New York city magistrates on the elective list, as proposed by the Sullivan bill of two years ago, shows that there is a possibility of getting popular support in making this class of judges appointive and taking them out of the hands of our present ruling class, the politicians.

Another line of advance lies in the following suggestion. Let judges have a separate non-partisan column on the ballot. Impose upon the governor the duty of selecting a complete list

of judicial candidates six weeks before the election and allow three weeks after that during which counter nominations may be made by petition by such voters as find reason for dissatisfaction with the governor's nomination, all the candidates' names to appear without the party label, except that opposite the governor's selections shall be the words, "recommended by the governor." This would have all the appearance of popular election, would give the people perfectly fair opportunity to nominate and elect when they felt it necessary to correct the governor and, without taking away any of the "privilege" of direct election of judges, would bring about practically an appointive system.

EVERETT P. WHEELER, New York city: The method of judicial appointments is of great practical importance.

A lawyer in good practise who has the confidence of his clients is measurably satisfied with his position and is not going to a caucus to get a political nomination, so he stays out. On the other hand, a governor who knows his duty will search for the best men. I have had extended experience, and I know you can get first-rate lawyers to take nominations for the bench if you seek them out, but they will not go into a campaign. It is perfectly true, as the last speaker said, that the average voter pays very little attention to his judiciary ticket. Years ago when Croker was the leader of Tammany, he took offense at Joseph F. Daly, who refused to vote for apportioning judicial sales to some of Croker's friends. Croker had influence enough to prevent Daly's renomination. A few of us independents, in coöperation with the Republicans, nominated a ticket with three candidates, Mr. Daly, a Roman Catholic, Mr. Taft, the President's brother, a Protestant, and Mr. William N. Cohen, who had been on the bench temporarily, a Hebrew, and one of our very best lawyers. There was a representative ticket, a Roman Catholic, a Jew and a Protestant, all of them men of the first rank in their profession. And yet with all the campaigning we could do, and all the energy we could put into the fight, we lost that election. Had that been a matter of judicial selection there is no question that any governor would

have been disgraced to refuse to appoint these men as against those that were elected.

Then again, since we are dealing with facts, pray allow a witness to speak from personal observation. I have been practising for fifty years at the bar, about half that time in the federal and half in state courts. I say without fear of contradiction that on the whole the judges of the federal court are superior men and do more work than the judges of the state courts. I do not say there are not many men on the bench in the state courts who are the peers of the federal judges. But take them altogether they are distinctly inferior, and I think any lawyer with the same amount of experience will agree with me in this. The judges in the federal courts are appointed by the President to serve during good behavior.

So much for the method of judicial appointment. As to the judicial recall, permit me to say as a result of my endeavor to keep in touch with the plain people, that it is my belief that the great majority of the plain people have no such distrust of the judges as has been assumed. You look at a storm on the sea, and think the whole body of water is convulsed, but this is not so; it is only the surface; below the surface it is calm. The sentiment expressed and described in Mary Antin's remarkable book, *The Promised Land*, is just and true; our people love their country, are proud of their institutions, satisfied that more than any others they permit the prosperity of hard-working industrious men. These are the men for whom government is formed and they prosper under it, and it is essential that the rights of the individual should be protected against the tyranny or corruption of a temporary legislature. We have experienced that. In the old Georgia case there was offer of proof that a legislature was bribed; the court said it could not look into it, but the fact was undoubted. There have been legislatures in my time that have passed acts for money consideration. The Senate of the United States found that the legislature of Illinois was bribed to elect Lorimer. It is to guard against such abuses that our constitution provides certain limitations to the power of the legislature. For the judge to have the decision recalled is to destroy his self-

respect; he would always know that the fight would have to be made at some time in a contest involving not his moral character, but his success in a controversy. The knowledge that such a fight was imminent would be destructive of his independence. We have a remedy by impeachment for misconduct in office: in my time three judges have been impeached in this state and removed from office. I do not object at all to the suggestion that the proceedings for that purpose be facilitated. I should be willing that the bar association, for instance, should present charges; they did so, in fact, in the cases I speak of. That is what the bar association of this city was originally organized for, to present charges against these three corrupt men. We got our hearing from the legislature, though it is true we had to go to the assembly first. Within a few years another such proceeding was taken at the instance of the state bar association. These things are quite within the competence of existing societies. If a judge is accused of corruption, he should be subject to removal, and there should also be provision for removing an incompetent judge. But if you put this matter into the hands of a group of voters, who may choose to bring up an issue, not of whether the judge has done wrong, but of whether the people want to get rid of him, you destroy the judge's independence, and preclude the possibility of getting independent and first-rate men on the bench. It seems to me that the adoption of judicial recall is destructive, and I look upon the men who advocate it as I do upon the men who fired on Fort Sumter. Believe, me, friends, if this should be adopted our distinctive system of government would be broken down and the security of individual rights of person and of property would be destroyed.

CHARLES HOPKINS HARTSHORNE, Jersey City: It may be of some interest to you to know that in the adjoining state of New Jersey we have more than one system of appointing judges. None are elected except justices of the peace. The judges of one of the strongest courts in the state are neither elected, nor appointed by the governor; the judges of the court of chancery, or, as they are called, vice-chancellors, are appointed for terms

of seven years by the chancellor without any concurrent authority at all. The constitution of New Jersey provides that "the court of chancery shall consist of a chancellor," so that there may be legally no judge of that court except the chancellor; but some thirty years ago, when it was found that no one man could keep pace with the work of the court, a vice-chancellor was appointed by authority of a statute. The number has since been increased to seven. In theory, they are only referees, but in fact they exercise nearly all the functions of the chancellor, nearly all the powers of the court. The decrees of the court are signed by the chancellor in the form advised by them. No appeals lie from their decisions to the chancellor, but directly to the court of errors and appeals. The chancellor has found it necessary to select for his relief and the credit of his court the best men he could get for that office. I think, of all who have been appointed, there was only one who was not of exceptional ability, and he held office only one term. As to the judges of the other superior courts, they are all appointed by the governor for terms of seven or five years. But there has grown up a practise that has become unwritten law, that a judge of the supreme court who is satisfactory shall be reappointed, and for so long as he gives satisfaction to the bar and the public. I think there has been no case within my memory where a judge of that court has failed of reappointment except from advanced age or illness, with the result that although their terms are for only seven years, we have had judges who have served for thirty years, and few who have served less than three or four terms, and if they have left then it has been because of their own wish or because of advanced age. The result of this practise has been a very satisfactory court.

But when we come to the courts of common pleas, the county courts, the case is different. I am sorry to say appointments to them have been generally regarded as spoils of office. There has been this result, however, from the appointive system, that with one or two exceptions the judges, even of the county courts, have been entirely removed from politics. The sentiment of the state is so strong against a judge mixing in politics that by mere force of that sentiment a judge finds himself com-

pelled to withdraw from direct, and even from indirect, connection with politics. From that point of view, at least, I think the appointive system has been successful.

EDWARD D. PAGE, Oakland, N. J.: In raising the question as to whether there was widespread distrust of the courts, Mr. Wheeler injected a note of skepticism which I think it will be of value to continue, as this is one of the two points upon which the proposition of the recall of judges seems to be based. My own experience is that no such widespread distrust of the courts exists. Coming in contact with a great variety of people, both as a recorder in a New Jersey borough and in rather extensive civil litigation in the city of New York, as president of the Merchants' Protective Association, I am led to believe there is almost everywhere a most profound respect for the courts which penetrates the great inarticulate masses—the people who are not glib talkers and who rarely express their opinions in public.

The only other point on which the advocacy of this remedy seems to be founded is that it would be an education for the people to be obliged to discuss and determine for themselves the decisions of law with which they may be dissatisfied. Is it not rather a large undertaking for the people at large to gain the necessary knowledge to inform their judgment so that they may intelligently express opinions about matters such as those who advocate the recall of judges or the recall of decisions would put before them? I think most people would rather not have such a responsibility put upon them, and I think that the real reason why there is now so little interest in the election of judges is that the voters realize that they do not possess the information necessary for them to express an intelligent opinion. They are, therefore, content to leave the matter in the hands of the men who make the nominations, following them because they have better judgment as to the qualifications of a judge. I think whenever you present a question which people know is beyond their judgment they will tend to rely on someone else, and if the boss seems the handiest man, they will naturally follow him. They certainly will follow the district leader, and he is always for the "ticket."

It is a fallacy to believe that the recall is a new question. There was a democracy in Athens, where the recall of the judges prevailed. Was it not Aristides who, when the question of his recall was being voted on, sat beside the urn where the voters were casting their votes, and, asking a man who voted to ostracize him, "Do you know this Aristides?" got the answer, "No, but I am tired of hearing him called 'the Just.'" Socrates also was obliged to suffer the recall and to drink the hemlock because of the vague popular opinion against him. How can people who cannot possibly inform themselves be expected to express an opinion intelligently on such subjects? Are we ready as a democracy to present these questions to the whole body of voters? Can we trust a majority of them, no matter how much we believe in "the people," to express opinions intelligently on subjects on which they cannot be informed? Are we not going rather rapidly with political experiment when we expect the mass of the people, as in Oregon, to read and digest a book of two hundred and fifty pages before they can express an opinion on the questions at issue in a single election? Are we ready to advocate that state of affairs, and may we not, in our zeal for democracy, destroy democracy by its own excess?

THE FEDERAL BUDGET:

WHAT THE PRESIDENT IS TRYING TO DO BY WAY OF BUDGET MAKING FOR THE NATIONAL GOVERNMENT¹

FREDERICK A. CLEVELAND

I AM assuming that you wish me to say something concrete about what the President is trying to do by way of budget making for the national government.

The President's Inquiry into Economy and Efficiency

The first step which was taken by the President looking toward a revision of methods of making and submitting estimates for the national government was in October, 1910. An appropriation of \$100,000 had been made at his request

to enable the President * * * to inquire more effectually into the methods of transacting public business * * * with a view to inaugurating new or changing old methods * * * so as to attain greater economy and efficiency therein * * *.

A preliminary inquiry was first organized under Hon. Charles D. Norton, Secretary to the President. In mapping out the inquiry it was thought that the investigation of methods should bear on one or the other of two subjects, *i. e.*, it should look toward more intelligent and more efficient "*planning*," or it should look toward the more efficient and economical "*execution of plans*." One of the first subjects to which attention was given, therefore, was the procedure relative to the making of estimates and appropriations—the subject of "*planning*" for the next year's business.

The Appointment of a Commission of Experts to Report with Recommendations

March 8, 1911, the President's Commission on Economy and

¹ Read at the meeting of the Academy of Political Science, October 26, 1912.

Efficiency was organized. This commission took over the work which had been begun under Mr. Norton, and, among other things, undertook to prepare a report on the need for a national budget. On June 19, 1912, about fifteen months after the commission was organized, it submitted its report on this subject with recommendations to the President.¹

The President Decides to Prepare and Submit a Budget

As a first step toward providing the necessary means for locating both executive and legislative responsibility for the intelligence and the efficiency with which *plans* are made, the commission recommended that the Executive should prepare and submit to Congress each year a prospectus of work to be undertaken, with an estimate of cost. The report of the commission was approved and sent to Congress by special message June 27 last. On July 10 the President addressed a letter to each department head in which he said:

It is my desire to send to Congress, at the same time that the Book of Estimates * * * is presented by the Secretary of the Treasury, a budget along the lines set forth in my message to Congress of June 27 last. In order that this may be accomplished it will be necessary for the head of each executive department and other government establishment to prepare two sets of estimates and summaries of estimates, one in accordance with the present practise and one substantially in accordance with the forms contained in the report of the Commission on Economy and Efficiency, which was sent to Congress with my message.

Attempt to Prevent Action of President

The message with the report of the commission was laid before Congress too late to receive formal consideration. The committee on appropriations took cognizance of the report and recommendations approved by the President as well as of his letter of July 10, and inserted in the revised draft of the legislative, executive, and judicial appropriation bill (the first bill having been vetoed), the following:

¹ " *The Need for a National Budget.*" House Document 854, 62d Congress, 2d session, 575 pp., transmitted to Congress by special message of the President, June 27, 1912, referred to the committee on appropriations, and ordered printed.

Sec. 9. That until otherwise provided by law, the regular annual estimates of appropriations for expenses of the government of the United States shall be prepared and submitted to Congress * * * only in the form and at the time now required by law, and in no other form and at no other time.

The belated appropriation bill containing this clause was passed on August 24. Explaining the purpose of section 9, just quoted, the chairman of the committee on appropriations on the floor of the House, said:

*It was believed * * * that it would not be wise for Congress to abdicate, even by implication, its prerogative in this matter.* A message from the President had already laid before Congress a very full and luminous exposition of the proposed "national budget," and until it could be determined by careful and deliberate study of the scheme whether it should be accepted and adopted, it was not deemed wise or provident to have, as indicated in the public press, the time and energies of large numbers of the most capable persons in the several branches of the public service diverted to transforming the entire estimates for the next fiscal year into this new and unauthorized plan of a so-called national budget, to the neglect of their ordinary and pressing duties.

The President Orders Heads of Departments to Coöperate in Preparing a Budget

This statement was made by the chairman of the committee on appropriations on August 27. As the result of the confusion which followed, the President on September 19 sent to the Secretary of the Treasury and to each department head a letter, in which he again called attention to his instruction of July 10, and clearly set forth that, in his opinion, Congress could pass no law which would estop the President from obtaining from administrative officers such information as he may desire. The President's attitude in relation to the budget may best be expressed in his own language:

Under the constitution the President is intrusted with the executive power and is responsible for the acts of heads of departments and their subordinates as his agents, and he can use them to assist him in his constitutional duties, one of which is to recommend measures to Congress and to advise it as to the existing conditions and their betterment. * * *

If the President is to assume any responsibility for either the manner in which business of the government is transacted or results obtained, it is evident that he cannot be limited by Congress to such information as that branch may think sufficient for his purposes. In my opinion, *it is entirely competent for the President to submit a budget*, and Congress can not forbid or prevent it. It is quite within his duty and power to have prepared and to submit to Congress and to the country a statement of resources, obligations, revenues, expenditures, and estimates in the form he deems advisable. *And this power I propose to exercise.*

In order that there might be no mistake with respect to the duty of administrative officers, the President further said :

In conclusion, therefore, my instruction is to *print and send to Congress the forms of estimates required by it of officers, without delay; also to have sent to me the information asked for in my letter of July 10, 1912. This will be made the basis for review, revision, and summary statement in the form of a budget* with supporting documents which may be sent to Congress by special message as the proposal of the administration.

I have given to you this short historical sketch of what has happened at Washington, in order to clear the way for a discussion of the proposals of the President so far as these relate to fixing both executive and legislative responsibility for the inefficiency and waste due to lack of intelligence in making and approving plans for work to be undertaken and due to conditions attached to appropriations which make it difficult *to execute plans* after they have been approved.

Budget Procedure Recommended by the Commission

As related to the location of responsibility, the budget procedure which is recommended by the commission is as follows :

1. That preliminary *bureau* estimates should be prepared by the technical experts in charge of the work—thereby making available to the cabinet officer and to the President the information and the opinions of those who are in a position to understand both the character of the work to be done and the practical conditions to be met.

2. That these preliminary *bureau* estimates should be submit-

ted first to department heads—in order that the cabinet officer as departmental executive may consider the request of each bureau in relation to the work of the department as a whole.

3. That preliminary departmental estimates, having thus been prepared by bureau heads and reviewed by the cabinet officer in charge, should then be submitted to the President with the recommendations of the cabinet officer.

4. That the President should then have the preliminary *departmental* estimates and the recommendations of the heads of departments compiled and analyzed by someone representing him as Chief Executive—in order that the requests of each bureau and the recommendations of each cabinet officer may be readily understood and considered in perspective.

5. This having been done, the President, with his cabinet, would consider each request and recommendation for the purpose of deciding what the President as the responsible head of the administration shall submit to Congress as a request for appropriations, and what changes in law will be asked for to enable the Executive to transact the business of the government with greatest economy and efficiency.

6. Final conclusion as to what the administration will stand for having been reached, not only with respect to requests for appropriations, but also with respect to methods of financing, these conclusions would be summarized in the form of a definite *budget* which would be sent to Congress and at the same time laid before the country through the President as the constitutional head of the administration.

Essential Differences Between the Present and the Proposed Method

The differences between the method at present employed and the plan proposed by the President in his special message of June 27 last are these:

First: At the present time Congress, by law, requires the many heads of departments and establishments to report estimates to Congress direct without providing for revision or review by the President. The President takes the position that it will not only locate responsibility for proposals made, but will add

very materially to the efficiency of the executive branch of the government if plans for future work be prepared by heads of bureaus and establishments as the subordinates of the President who, under the constitution, is made responsible for their acts.

Among the results which it is thought that this change in method would accomplish are these :

It would improve discipline by making heads of bureaus and offices feel a more direct responsibility to superiors.

It would establish greater solidarity and unanimity of official actions, in that it would bring departmental officers into more direct dealing with the President.

It would give to executive officers a greater sense of responsibility in the making of plans for future work as well as in the consideration of results of past work, which would be reported as a basis for legislative consideration of the budget submitted.

Executive heads, knowing that they would be called upon by the President to render a strict account of stewardship, would take their responsibility for supervision and control more seriously ; they would insist on having the information made available which is necessary to enable them to think about the business of the department and to confer intelligently with the President about it.

It would do away very largely with personal politics and " understandings " as a means of obtaining funds for the support of bureau and local activities.

It would require the officer in charge of a bureau or subdivision to depend on his superior instead of constantly circumventing him—in many instances working openly against him—in order that he may find more favorable standing with members of Congress.

It would make necessary the keeping of records and the making of reports, instead of having the plans of work decided in a committee room behind closed doors on oral statements of persons in charge of work, statements based on personal experience and carefully guarded as the stock in trade of the officer or the committeeman.

Second : At the present time the preliminary estimates of

departments are sent to the Secretary of the Treasury, who acts as an editor and messenger for Congress. The President takes the position that it will not only locate responsibility, but will add much both to the economy and to the efficiency with which plans are made for future work, if these plans are submitted to Congress and to the country by the President with such supporting data as may be necessary to the consideration of every question of public policy which is involved.

Among the results which it is thought that this change in method would accomplish are the following:

It would require that the President, with his cabinet, shall carefully consider every detail necessary in view of the executive responsibility for proposals made, before they are submitted.

It would require that the information with respect to past work of the government as well as the information with respect to work to be undertaken, should be in such detail and so classified and summarized as will enable the President and his cabinet to consider every question of public policy relating to work proposed before submitting the budget.

This information having been collected for the benefit of the President and the heads of departments, would be available for Congress and for the public.

Third: At the present time Congress assumes responsibility for submitting the first formal proposal for financing future work, as a result of which it is necessary for it to submit the preliminary estimates to committees who, in the nature of things, cannot report until near the end of the session. The President takes the position that it will not only place responsibility where it belongs, but will add materially to the information of Congress and to the efficiency of the executive branch of the Government to have a definite, concrete, well-considered, understandable request for appropriations, with recommendations as to methods of financing laid before Congress *at the time it convenes*.

Among the results which it is thought that this change in method would accomplish are these:

Those who are asked to prepare *preliminary* estimates would do so knowing that they were dealing with their official superiors and therefore would be under the necessity of dealing frankly and open-handedly with them. They would also have every inducement to give to such officers the best information with respect to each proposal submitted as a means of enabling their official superiors to represent them most ably.

Knowing that their estimates as well as the recommendations of heads of departments would be considered by the President, there would be the same motive as at present for each bureau head to advance the claims of his service, and there would be the added advantage of having the conclusion reached in conference made a part of an executive program which could be thought about and understood by the country as well as by individual members of Congress.

Instead of being required to wait until committees on appropriations had reported before questions of changes in organic law recommended by heads of bureaus and departments could be considered, these questions would be laid before Congress at the beginning of the session; this would enable Congress to refer these requests to proper committees and to have action taken on their recommendations while the committees on appropriations were at work on the estimates.

Instead of being put to the necessity of loading up the bills prepared by regular committees on appropriations with "riders," because there is no time remaining for independent consideration, the committees on appropriations could formulate their bills on the action taken by Congress on each subject submitted for constructive legislation at the beginning of each session.

When the committee on appropriations reported its conclusions in the form of a bill, each member of Congress and the country as a whole would be in a position to form an intelligent opinion about the significance of its recommendations, since the same information would be available to all.

Instead of having hundreds of millions of dollars voted away by Congress within a single day, without question raised by any member on the floor, appropriation bills would necessarily be discussed at length, as they would also be discussed by the press and through other agencies of publicity.

Fourth : At the present time the conditions attached to appropriations are such as to rob the government and the country of benefits to be derived through the exercise of executive discretion with respect to questions of business that cannot be properly considered a year ahead of their occurrence. The President takes the position that it will not only locate responsibility where it belongs, but it will add very much to the efficiency and economy with which business is done, if the conditions attached to appropriations are limited to questions of general policy and do not hamper the officer in the use of judgment with respect to the details of work to be done.

Among the results which it is thought that this change in method would accomplish are these :

Upon the information which is submitted with the budget, and such further information as may be developed through legislative inquiry after the submission of the budget, Congress would assume responsibility for deciding what work should be done ; what should be the organization provided for doing work ; what amounts or funds should be voted.

Congress would also assume responsibility for deciding what conditions should be attached to appropriations as a matter of general law.

Subject to these conditions of general law, the head of each department would assume responsibility for deciding how the money should be spent, to the end that he might use his organization and do the work for which he was made responsible, with greatest economy and efficiency.

By giving to the Executive the right to decide what is best adapted to the accomplishment of a given end, *i. e.*, what shall be purchased or contracted for, what prices

shall be paid—by requiring that the responsible officer shall render an account that will reflect the efficiency of each employe as well as of his organization as a whole, and the economy with which expenditures are made—the cost of doing public business may be very materially reduced, and the character of the service rendered correspondingly improved.

Fifth : At the present time there is no adequate means provided for locating executive responsibility for inefficiency and waste. The President takes the position that the plan proposed will locate executive responsibility not only for the efficiency with which *plans are made*, but also for the economy and efficiency with which *plans are executed*.

The means proposed for locating executive responsibility for the efficiency and economy with which *plans are made*, and the work authorized is *executed*, are as follows :

Congress should attach to all funds appropriated, as a provision of general law, the following conditions :

- (a) that before any part of any appropriation or fund is encumbered or expended, allotments to subordinates for work to be undertaken by them shall be made ;
- (b) that each allotment shall be based on estimates prepared by officers in charge of the work ;
- (c) that estimates prepared as a basis for allotment shall be expressed in the same detail as expenditure accounts are required to be kept and reported ;
- (d) that in case the estimate is for work of a character which has heretofore been carried on, it shall be supported by comparative expenditure data ;
- (e) that the estimates prepared as a basis for allotment be submitted to the heads of the department or establishment to which the appropriation runs ;
- (f) that the estimates for allotments thus prepared and submitted shall be considered by the head of the department in relation to the amount and purpose of the appropriation which has been made available ;

- (g) that after the requests for allotments have been so considered and decision is reached that an allotment shall be made, an advice of allotment setting forth the amount allotted for each purpose shall be formally executed and made a matter of public record;
- (h) that as a means of giving publicity to the allotment so made a copy shall be sent to the department of the treasury for the information of the auditor, and also a copy to the clerk of each house for the information of Congress;
- (i) that whenever it may seem desirable to rescind or modify any allotment, these rescindments or modifications shall be made in the same formal manner;
- (j) that *fund accounts* shall be kept in such manner as to show: (1) the allotments and unallotted balances of appropriations, (2) the encumbrances and the unencumbered balances of appropriations and allotments, (3) the unexpended balances of appropriations, (4) the balance still subject to requisitions for cash and (5) the available balance in the hands of disbursing officers;
- (k) that *expenditure accounts* be so kept as to show: (1) the cost by allotments, by jobs or subdivisions of work under allotments and (2) that each of these be kept and reported in such an analysis as would show the amount expended for salaries and wages, supplies, materials and other articles, or objects of expenditure in the manner prescribed by the comptroller of the treasury, in order that the information produced may be summarized and recapitulated for each service, for each department, and for the government as a whole.

By requiring each executive head to assume responsibility for saying how he proposes to spend his appropriations before any action is taken, and by requiring him to keep an up-to-date analysis of expenditures which will show how the money has

been spent, as well as the character of results which have been obtained, and by making both the "fund accounts" and the "expenditure accounts" public records to which any one who may be interested may have access (subject to such reasonable rules as may be prescribed for the protection of the office), by providing further for a system of reporting which will make these facts regularly available to executive officers and periodically available to the public, any attempted subversion, any result which may show inefficiency in the organization, any waste which may be due to lack of proper attention or supervision, would be a matter which no chief executive could afford to overlook.

Should it happen that an executive officer desired to use funds wastefully or in a manner not intended, the President could not afford to assume responsibility for his action or continuation in the service. Nor would Congress be lacking in the means necessary to protect the best interests of the public, if the evidence necessary for locating executive responsibility were at all times at hand.

This is the alternative proposed to the present method of transacting public business behind closed doors and in the dark, the legislative branch dealing with the executive branch as under suspicion, the administrative officer withholding information from Congress and the public on the theory that he is to be placed on trial and must appear as a witness for his own prosecution—therefore the less said the better.

*Proposals of the President Based on Common Experience and
Common Sense*

These proposals of the President are based on common experience and common sense. They are supported by the best judgment and the best experience which has been gained in organization and management of corporate bodies, both public and private. While officers of a private corporation are not ordinarily limited by law in such manner as to make it necessary for them to act under formal appropriations, it is the ordinary method of transacting business to have the president of a corporation lay before the board, at its annual meeting, a report

which is also made available to citizens or stockholders; it is common experience for the president, as the responsible head of the executive branch, to set forth what has been done during the past year and what it is proposed that the corporation should do during the next year; it is common experience for the president, as the head of the administration, to accompany his proposals with estimates; it is common experience for the executive, as the head of the administration, to submit estimates with recommendations as to how proposed expenditures shall be financed. These data are submitted to the board and made available to the public or the stockholders as a basis for consideration before authorization is given to go ahead. On the basis of the report submitted as well as the proposals made the president of a corporation expects to obtain the support and coöperation of the board, in so far as his record may entitle him to support and his report and proposal may in their judgment accord with the ends and purposes of the institution which they represent. When the proposal of the executive is thus clearly stated, responsibility for action taken is definitely located. In case there is a division of opinion between the board and the executive, their differences are clearly defined and may be acted upon by stockholders or citizens, as the case may require. It would be little less than insane for the trustees of a private corporation, as the representatives of stockholders, to pass a by-law requiring that each department and division head should report to the board direct what he thought ought to be done with the estimates of costs, without having these matters first passed upon by his executive superior. Under such circumstances the board could not expect to act on the best advice; what they could expect and invariably would receive would be proposals for expansion and corresponding proposals for expenditures that would bear no relation to the ability of the corporation to finance them. Such a requirement is just as adverse to intelligent *planning* and to the economic *execution of plans* in government work as it would be if imposed by the board on a private corporation. It is this method that the President is undertaking to supplant.

The Budget as a Means of Locating Congressional Responsibility

Having before them a definite statement as to what it is that the President assumes responsibility for, having before them the brief of the administration supporting each proposal, then the responsibility of the members of Congress would be just as clearly marked. As each member would have before him at the beginning of the session a statement of facts about each question in which he or his constituency may be interested, each member and each committee would be in a position at once to go into each item or question submitted, and in case any detail necessary to complete understanding was lacking, to ask that this detail be supplied. The effect of such a proposal as is made by the President would be to make each member of Congress free to think, to speak and to vote as he chooses on each proposition for which the President assumes responsibility; he would be able to act independently instead of being led around by the nose by some one, or some few, who may have a monopoly of information. But while each member is thinking and speaking and voting, citizens may likewise be thinking; the press may be speaking; the constituency of each member may be busy "instructing their representative" as to which proposals of the administration or of Congress are at variance with their views.

One proposal of the President deserves special consideration, *viz.*, that in case Congress sees fit to bring in new measures—measures requiring appropriations not contemplated in the budget submitted by the President—such measures shall be submitted as a separate bill, instead of being injected as a "rider" on the regular bill. The advantage of such a proposal is obvious. It puts responsibility where it belongs. It gives to the President the same opportunity to consider and act independently on proposals for appropriations originating in Congress that Congress has with respect to proposals originating with the administration.

The Difficulties which Lie in the Way of the President

In giving this enlarged interpretation to executive responsibility under the constitution, President Taft has undertaken a

task the difficulties of which can scarcely be comprehended. Not only has the government never had a budget, but it has never had a balance sheet; it has never had an operation account; it has never known how it stood financially; it has never had any means for reviewing its contracting and purchasing relations; it has never had the information necessary for considering questions of economy and efficiency of service rendered. As a safeguard against ignorance and official irresponsibility, the service has been bound up in a mass of red tape that makes efficient management impossible. Instead of being able to base his proposals on accounts and reports such as are ordinarily available to a corporate executive, the President is put to the extremity of requiring re-analyses of all the transactions of the past two years. He is also put to the necessity of having the estimates prepared on entirely new lines. This could not be done before the last fiscal year was completed—July 1. The mass of detail which must be analyzed and summarized is only suggested when we consider that the Government is engaged in practically every kind of undertaking known to private concerns, and on a scale that puts executive attention and judgment to the severest test. That the first budget submitted cannot be all that may be desired is certain; but if, through this first submission, the people of the United States have laid before them a picture of what it is that Congress is asked to finance, and if the way be pointed out for locating responsibility for failure to provide adequately for welfare needs, an end will have been achieved that will make it as impossible to continue to do business by the methods that have obtained as it would be for the American people to revert to coach and pillion after the introduction of the railroad and the automobile.

EFFICIENT ORGANIZATION OF THE PERSONNEL IN ADMINISTRATION¹

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MY discussion of this topic will be confined entirely to a consideration of the problem as it presents itself in our national government, though most of the points raised and lines of action urged are, it is believed, of more general application.

The subject of the government personnel may be considered from a number of viewpoints:

(1) That of improvement of our political institutions and purification of politics.

(2) That of justice between individual citizens in respect to opportunities for entrance into the government service, and of advancement after entrance according to personal merit.

(3) That of efficiency, or securing the maximum return in work done for expenditures made for remuneration of personal service.

In a general way these three manners of viewing the question may be said to be those of looking at the problem from the standpoint of: (1) the general public, (2) the employe and (3) the employer.

It is my purpose to approach this important question of efficiency in administration from the third of these standpoints—that of the employer, the hard dollars-and-cents point of view of getting the most for your money.

The personnel of the government may, for purposes of consideration, be divided into three classes: (1) Subordinate positions. (2) Directing personnel at Washington. (3) Field positions.

In respect to the first of these, the selection of entrants to the

¹ Read at the meeting of the Academy of Political Science, October 26, 1912.

service through some form of examination, competitive where feasible, has now come to be the accepted method of determining merit or fitness. As regards this class and their method of entrance into the service, the battle for the merit system may be said to be almost over. There are many other problems, however, connected with securing efficiency in respect to this class of public servants that still remain to be solved. The so-called "apportionment principle," in accordance with which the effort is made to distribute appointments among the several states in proportion to their population, is vicious in theory and detrimental in practice. It means the payment of higher salaries than are necessary, since a greater remuneration must be offered to induce competent persons to come from distant points to Washington at their own expense. It means that such persons leave their homes, where their expenses of living are lower than they are in Washington, where they must make independent provision for quarters and board. It means, further, that the more efficient will be passed over in favor of the less efficient, simply because the latter happen to hail from states whose quotas are not filled.

Again, scarcely a beginning has been made toward the establishment in the several services at Washington of proper efficiency tests through which the work of individuals may be controlled and ratings for promotion prepared. The classification of employes and the adjustment of compensation to character of work performed are defective in the extreme. No scheme has as yet been put into practice for retiring superannuated employes, though the adoption of a proper plan for accomplishing this is a *sine qua non* if an efficient personnel is to be secured. This last matter has received especial attention at the hands of the Commission on Economy and Efficiency. That commission has submitted a report outlining a plan which it believes will fully meet the needs of the situation. This report has been transmitted to Congress by the President with his hearty endorsement.

I will pass over these matters touching the subordinate personnel with this mere mention, as I desire to devote my attention to certain problems connected with the other two classes,

the directing personnel at Washington and the persons in field positions, as these classes have received little or no attention at the hands of the public and it is desirable that they should at least be brought forward in meetings of the character of the present one.

In respect to the first of these two groups, the directing personnel at Washington, scarcely a beginning has been made toward the adoption of the merit principle as the determining factor in selecting persons for appointment. All of these positions, by which are meant such positions as assistant secretaries of departments and chiefs and assistant chiefs of bureaus, by whom, under the President and the nine Secretaries, the real work of directing the government services is performed, are now with few exceptions appointed by the President by and with the advice and consent of the Senate, mostly for terms of four years. As such they are, in conformity with civil-service rule II, adopted in 1902, excluded from the classified competitive service of the United States.

I have no hesitation in saying that in my opinion this condition constitutes one of the most serious defects in our governmental machinery as bearing upon the matter of efficiency of personnel, and that its continued existence militates strongly against securing the maximum of efficiency and economy in the administration of public affairs to which the country is entitled. I say this notwithstanding the fact that it is difficult to contradict the statement that these positions of assistant secretaries, chiefs and assistant chiefs of bureaus are in general held by an efficient and, for the most part, technically qualified body of men.

My objection to the present system is not that honest and capable men have not been secured under it for these important positions. But these positions should be made a part of the general classified service in respect to which permanency of tenure during good behavior and a satisfactory performance of duty prevails, and appointment to which is nominally by promotion within the particular service in which the vacancies occur, or within the government service generally, and failing

this by some selective process that will test the capacity of the persons not in the government service who are considered for appointment. Until these principles are definitely put into practise it is impossible to secure that well-balanced service and *esprit de corps* running from the top to the bottom in the services individually and in the government service generally that must exist if the best work is to be obtained.

It will be seen that the point upon which I lay emphasis in thus urging that these higher administrative positions at Washington be made an integral part of the permanent classified service of the government is the beneficial effect that such action will have upon the service generally. Only in secondary degree do I attach importance to the consideration of securing a higher class and more technically competent corps of officials for these positions.

At the present time what amounts to a deadline is drawn at the positions of chief clerk and chief of division, the prevailing salaries for which are \$2,000, \$2,500, and \$3,000. Up to this point the government employe may look upon his service as one in which he may hope for advancement as he shows merit. Beyond this lie the positions of the real directing heads, the positions that constitute the posts that are really worth while, indeed the only ones offering an effective incentive to persons to adopt the government service as a career. Remove this barrier, make it possible to pass as a matter of normal promotion from the position of chief of division to assistant chief of bureau, chief of bureau and assistant secretary, and the government service at once becomes one offering a real career. Not merely will action in this way afford to the ambitious attractions to enter the service that do not now exist, but a strong stimulus will be given to persons in the service to discharge their duties efficiently and, by study and research, to fit themselves for the discharge of the duties pertaining to the superior positions.

Under this system when a vacancy occurs in an important position, such, for example, as that of assistant secretary or chief of a bureau, the appointing power—the Secretary or the President—will canvass the qualifications of the chiefs of divisions in

the particular service affected. If just the right man is not found within such service the qualifications of persons holding important positions in other services engaged in analogous lines of work will next be scrutinized. Only after it is found that a man having the qualifications desired cannot be obtained within the government service will resort be had to persons outside the service. In this case selection will be made through some selective process such as is represented by a competitive examination. There can be little reason to doubt that resort to this latter method will be had only in exceptional cases, since the appointing powers will certainly prefer to select one whose qualifications and personal characteristics are definitely known rather than to run the risk involved in holding an open competitive examination. There will, however, be a few cases, where highly technical or specialized qualifications are desired, where the administration will want to go outside the government service. Indeed a case will now and then occur where the services of a particular individual are desired, and where resort will be had to the power of the President to except such specific appointment from the general rules.

This proposition that the higher directing personnel at Washington up to, but of course not including, the Secretaries of the Departments, was strongly urged by the Commission on Economy and Efficiency in its report to the President on methods of appointment, which report was transmitted by the President with his approval to Congress.

From this consideration of the directing personnel at Washington, I wish now to turn to the third of the three groups into which, for purposes of consideration, I have divided the government personnel. This group constitutes what is known in government circles as the field services or field establishments as distinct from the departments at Washington.

It is a common mistake for persons unconsciously to take the position that the work of conducting the affairs of the nation is performed at Washington. Nothing could be further from the fact. The real work is done at the thousands of points scattered throughout the country at which are located

the post offices, the custom houses, the offices of collectors of internal revenue, the Indian reservations, the national forests and the like. The work done at Washington is for the most part but that of a central office for general administration, with but twenty or thirty thousand employes out of a total of three hundred or four hundred thousand.

All that has been said regarding covering superior administrative positions at Washington under the classified service, making these positions permanent and establishing the practise of filling them through promotions, applies with equal force to these field positions. The headships of these field services, thousands in number, are now treated as political offices. It is unnecessary for me to state that there is nothing of a political nature in their duties. Their functions are purely administrative and, until they are so regarded, anything approaching a really economical administration of their offices is impossible.

It is difficult to realize the full importance of the changes that would result if the recent recommendation to Congress by the President, that all these positions, high and low, be covered under the classified service, were carried out. It is probable that to most persons the significance of the action here recommended is simply that of taking the civil service once for all out of politics. It would do that, and that would be an enormous gain. This, however, would be but the beginning of the good that would result. From the standpoint of efficient administration it would lay the basis for a complete reorganization of the several services that would be revolutionary in character.

I believe that there are few persons who appreciate the fact that at the present time there do not exist, and under present conditions cannot exist, real national services for the administration of these important civil establishments. By national service I mean one in which each employe is a unit in a general scheme, instead of a unit in a personnel scheme for the particular office in which he is employed, one in which transfers and promotions can freely take place from one unit to another as merit warrants and the interests of the service as a whole dictate. It is only necessary to contrast conditions now prevailing in

a service which has been nationalized, so to speak, such as the consular or diplomatic service, with those prevailing in the postal service, the customs service or the internal revenue service, which are still on the localized basis, to appreciate the differences between the two from an administrative standpoint.

In the consular and diplomatic services the theory is—and practise is more and more conforming to this theory—that each officer and employe is a member of a single unified service. When a person enters either of these services in a subordinate capacity he can look forward to advancement, if he merits it, anywhere within the entire service. On the other hand the government, as soon as it finds an officer or employe doing good work in a subordinate position, can secure the great advantage that will result from his transfer to a more important position. Much the same conditions obtain in the public health and marine hospital service of the Treasury Department. Under this system each employe is under a constant incentive to give his very best efforts to the performance of his work and by study to fit himself for more responsible positions. The development of an *esprit de corps*, efficiency and faithfulness follows almost as a matter of course.

Compare this with conditions as they exist, and as pointed out, must inevitably exist under present conditions as regards appointments in the great services—the post office, customs, internal revenue, and many others that might be mentioned—which represent so large a part of the administrative activities of the government. In these services each field station is treated almost as a local office to be managed, as far as personnel is concerned, as a detached enterprise. Its directing head in practically all cases is not only appointed from among residents of the district, but the real selection is made, not by the directing head of the service but by the local representative of the district in Congress or on the governing board of the party organization. Only in exceptional cases is a vacancy now filled by promotion from the ranks. Practically never is the head of a station who has proved his competence transferred to a more important post in the service. To make matters still worse, appointments to these positions are made for the most part for terms of but

four years. In like manner the subordinate personnel, even though they are selected through competitive civil service examinations, are for the most part taken from the district in which the station is located and they have little or no prospect of promotion except within the particular station to which they are attached. Even here they are debarred from any reasonable expectation of rising to the top as a result of faithful and conscientious discharge of their duties.

It is difficult to conceive of a scheme of organization better adapted to deprive a personnel of incentive for good work, to stifle ambition for advancement within the service, or to tie the hands of a central administration desiring to put its service upon a really efficient basis. No private enterprise would undertake to conduct its affairs upon any such basis for a moment. Not the first beginning is made toward treating the services as offering permanent careers to their personnel. No pretense is made of building up a corps of directing officers representing a selection of the most capable. Were efficiency really sought, can there be any question that if a vacancy were to occur in such a position as that of collector of the port of New York, the administration would fill it by promoting to it some collector who has done efficient work at a less responsible post, and so on down the line? Except in respect to the subordinate personnel and then only within very narrow limits, no emphasis is laid upon efficiency in the performance of duty.

In urging the desirability of giving permanence to the higher personnel of the field services and of placing those services upon a really national basis as regards organization and personnel, I am not basing my argument merely upon theoretical considerations. Some twelve years ago it was my good fortune to be sent to Porto Rico as the treasurer of that island. Among the various duties that I had to perform in that capacity was the collection of the general property tax. For that purpose the island was divided into sixty-six districts corresponding to the sixty-six municipal districts into which for purposes of local administration the island had been divided. At the head of each district was a collector of taxes. The theory upon which this service was organized was that now obtaining in

respect to most of the field services of the national government here. Each office was a local service. There was practically no such thing as a man moving from one office to another. I changed all this. I nationalized or rather unified the service. I arranged the several districts in classes according to their importance and made a scale of remuneration for the collectors in charge running from \$480 per annum in the case of the least important to \$2000 in the case of the most important. There are probably eight or ten classes between these. I then established the practise of filling superior positions strictly by promotion and for merit. A man entered the service as collector at a small town with a salary of but \$480 per annum. If efficient he was transferred from post to post until the higher positions were reached. The result more than justified my greatest expectations. A genuine *esprit de corps* was developed. The collectors knew that promotions depended upon their collecting the taxes and performing their other duties properly. The result was that when I left the treasurership some six years later, uncollected or delinquent taxes for the island as a whole were less than two per cent. I doubt whether there is any state that can show an equally good record.

Later, as secretary of the island, the task fell to me of drafting a revised police law. In Porto Rico the policing of the island is done by a single insular police force of about eight hundred men. Having in mind the success following the unifying of the tax collection service, I adopted the same principle in preparing my draft. The island was divided into sixty-six districts corresponding to the municipal districts into which, as stated, the island is divided, and a district chief was placed in charge of each. These were arranged in a hierarchy with graduated salaries precisely as was the tax collection force, and the same principle of filling positions by promotion from less important posts was adopted. Equally favorable results were obtained from this law. A man now enters the police service as a permanent career. He knows that he can be advanced from post to post as he merits such promotion. From the standpoint of the government the responsible positions are as a matter of course filled by men whose competence has been proved in lower posts.

I know that it will be urged in favor of the local system now obtaining in the United States that this system is congenial to our historical traditions and institutions; that it represents but one phase of the predilections of the American people for a local as against a national administration of public offices; that the people will never acquiesce in having as their postmaster, collector of customs or collector of internal revenue, a person brought from another state. Whatever may have been the validity of these arguments in the past, when matters of states rights and local control loomed larger than at present, I believe that all basis for them has passed away. I believe that the people are fully prepared to accept real national services, and to support a movement that will make our great national services offer a real and permanent career to all persons high and low therein employed. They are certainly asking the question why these services cannot be as efficiently and economically organized and conducted as are private enterprises. Whatever the position they may take, the people are certainly entitled to know what are the defects of the present system, why they exist and what action is required to remove them. If they acquiesce in the present system they should at least recognize the sacrifice in efficiency involved in its maintenance.

In the foregoing I have considered in detail only two of the many questions connected with the securing of an efficient government personnel. These two, however, I consider as fundamental. They are both of the same general character. They have to do with the one great end that must be obtained if a really efficient service is to be secured, that, namely, of making the government service a real career to the ambitious, one in which not only permanency of tenure during good behavior is offered, but in which the positions really worth while can be secured as the result of conscientious and intelligent work within the service. No other device can take the place of the incentive to good work that would thus be offered. Until that incentive is furnished, until the administration seeks to put the most competent man in the most responsible position, other measures will be at best but patching up a defective machine.

LEGISLATIVE DRAFTING¹

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THE need for better drafted legislation has been presented frequently and forcibly by prominent lawyers and political scientists. The quantity and quality of our statute law, federal and state, has been the subject of vigorous criticism for many years. There exists a well-founded belief, which found frequent expression at the recent meeting of the American Bar Association, that the popular discontent arising from the tendency of our courts to declare unconstitutional or render ineffective by interpretation legislation enacted to remedy existing social and industrial evils can be traced directly to the fact that much of our so-called social legislation is hastily prepared, ill-considered, and thrown on the statute book without careful study of constitutional limitations, existing statutes, or the phraseology of the principles and rules necessary to give effect to the intentions of its proponents.

The Federal Employers' Liability Act of 1906, enacted to apply only to workmen engaged in interstate commerce, was so inaptly worded that the courts held that it included as well employes engaged in intrastate commerce, and for this reason was unconstitutional.² In 1908 the same act was re-enacted in words which precisely limited its effect to workmen engaged in interstate commerce, and in this form it has recently been held constitutional.³ Senator Sutherland, in a paper before the bar association,⁴ expressed the opinion that the decision in the Ives case might have been different if the New York Workmen's Compensation Law⁵ had been more carefully drafted.

¹ Read at the meeting of the Academy of Political Science, October 26, 1912.

² See *Employers' Liability Cases*, 207 U. S. 463.

³ See *Second Employers' Liability Cases*, 223 U. S. 1.

⁴ *American Bar Association Report*, 1912.

⁵ Ch. 674 *Laws of 1910*; declared unconstitutional in *Ives v. South Buffalo Railway Co.*, 201 N. Y. 271.

The subject of Prof. Reinsch's paper¹ this afternoon emphasizes another need for accurate drafting. If the initiative is to be made a successful method of legislating, means must be provided for the scientific preparation of initiated measures. Bills must be reasonably within the comprehension of the people if they are to be enacted or rejected intelligently. Errors and "jokers" are less likely to be detected by the whole mass of the people than by committees of the legislature, and, if detected, are more dangerous because the bills cannot be amended in the course of discussion and before final action as they could be in the legislature.

My subject is not the need for or the desirability of better drafted statutes, but the means by which they may be had. The scientific preparation of a statute involves:

1. Knowledge of conditions proposed to be regulated, and determination of the exact evils requiring regulation.
2. Determination of the nature of the regulation required and the precise principles or rules which will effect such regulation.
3. Phraseology of the new principles or rules and of necessary administrative provisions in apt and precise language which will fit them into existing principles of constitutional and statute law and make them reasonably clear to the executive and judicial officers who are to enforce them.

So-called practical legislators are fond of dividing these problems into: (1) matters of substance, which are for the legislator, not for the drafter, and (2) matters of form, which may be delegated to the drafter. The distinction, however, is of little value, for changes in phraseology frequently result in changes in policy. Policies determined upon in conference are often hard to recognize when they come from the pen of the drafter. No such division of the problems of preparing legislation is possible. So-called matters of substance and matters of form go hand in hand, and if the problems of legislation are to be solved wisely and effectively, the legislator and the expert drafter must work together.

¹"Initiative and Referendum," by Prof. Paul S. Reinsch, University of Wisconsin. See p. 203, *infra*.

Prof. John W. Patton, of the University of Pennsylvania Law School, says:

Legislative action, however, should be based upon demonstrated need, careful study of the proposed remedy in substance, of its constitutionality, of the meaning of every word used in a proposed act, with a careful examination of existing decisions as well as statutes. Knowledge of law as well as of the English language is required, and the pen of one who thinks he has a facility for legislative expression should indeed "make haste slowly."¹

In workmen's compensation legislation, for example, the legislator, if he performs his legislative duty seriously, must first study existing employers' liability law, and the evils, if any, produced by its operation. He must analyze these evils and consider the possible methods of remedying them, and for this purpose he ought to know and appreciate the methods by which in other states or countries similar evils have been remedied. Having decided that the compensation system offers the best means of doing justice, there remain for his decision important questions of policy involved in working out the details of such a scheme. For example, shall the scheme apply in all employments, in all with certain exceptions, or in certain specified employments selected because of their extra hazard or otherwise? Are all injuries in the course of employment to be compensated, or are certain injuries, such as those caused by an employee's own deliberate act, to be excepted? Upon what basis shall the compensation be computed, and how shall the computation be made, and under what conditions shall it be paid? What shall be the procedure to determine controverted questions? What, if any, administrative organization is required for the proper enforcement of the scheme? Every one of these problems involves the determination of a multitude of detailed questions of policy before the precise limits of the rights and liabilities created by the act are defined in such manner that employer, employee, administrative officer and the court may know when and to what extent the legislature intended that A, an employer, should

¹ "Festina Lente," *Penna. Law Rev.*, vol. 59, p. 214.

compensate B, his employe, in case the latter is injured in the course of his employment.

The foregoing are frequently described as questions of policy with which the drafter should have nothing to do; they are solely for the legislator. Theoretically, this is true. If all these questions were carefully weighed and decided by the legislator there would be nothing left for the drafter but to put the legislative decision into language. Practically, however, the great majority of these questions of policy do not occur to the legislator until the drafter in the detailed statement of the legislative intent uncovers the numerous instances to which the legislative intent has not been applied.

Determination of these questions of policy by no means completes the legislative task. There remain questions of constitutionality and the selection of devices, such as the so-called elective scheme, to avoid constitutional restrictions; the adjustment of the statutory scheme decided upon to the existing statute law on the same or similar subjects; and, finally, the selection of the language which will carry the statutory scheme into a statute at once constitutional and effective for the purposes for which it was intended.

Mere phraseology of a statute is itself a difficult task because of the imperfections and inadequacies of language, its unskilful use and the inability of the human mind to foresee all the contingencies which will arise in the daily operation of the law.¹ For this reason it is sometimes said that statutes should declare principles and not go into detail.

If important legislation is to be stated effectively in general principles it can be done only after very careful consideration by the drafters of all questions of detail and the selection of such general language as is suited precisely to the development and application of the general principle to the numerous particular instances to which it will be applied. Otherwise, the act is not truly general; it is simply incomplete.

There is an impression in this country that the English

¹ Compare remarks of F. Vaughn Hawkins, Esq., reprinted in Thayer's *Preliminary Treatise on Evidence*, appendix C, p. 585.

Workmen's Compensation Act is a good example of a well drafted act which states only general principles. In the case of *Lysons vs. Knowles*,¹ Lord Davey, in rendering his opinion in the House of Lords, referred to the act of 1897 as an "extraordinary ill-drawn act," and said:

The difficulty really arises from this—that the draftsman has apparently not worked out on paper into legislative language the scheme which he had in his head, and it looks very much as if the act had really been framed from notes of legislative intention and had not been expanded into the proper legislative language. Cases which have arisen, and cases which are likely to arise, appear not to have been contemplated, but apparently were supposed to be covered by the general language used in the act.

The English Compensation Act of 1897 was expressed in 12½ printed pages; the amended act of 1906 required 24 pages, and in addition there are now more than 150 pages of statutory rules and regulations² which have the force of law. Compensation, under the act of 1897, was based on "average weekly earnings"³ without any indication of the method of computing such earnings. This computation gave rise to so many difficulties in the cases which arose under the act that the drafters of the amended act of 1906 used nearly 400 additional words to explain the method of computing average earnings,⁴ a total of 400 words in the place of the 3 words in the original act. The German Insurance Code of 1911 represents a like expansion of the original laws.⁵

The tendency to couch statutes in general terms and to leave details of their administration to executive discretion simply shifts to executive officers the burden of applying the general principle to a particular case. This puts off the difficulty but

¹84 L. T. R. 65, vol. 3, Workmen's Compensation Cases (Minton-Senhouse), p. 1 (1901).

²The act and rules are reprinted in the appendix to Ruegg's *Employers' Liability and Workmen's Compensation* (1910), pp. 688-868.

³First Schedule, sec. 1, b.

⁴First Schedule, section 1, clauses (1) and (2).

⁵See translation in *Bulletin* No. 96 of United States Bureau of Labor.

does not overcome it; for if the law is to be even reasonably clear, executive officers must draft the rules and regulations and prescribe the schedules, reports and records, provision for which has been omitted from the statute. In this country, however, because of the general impression that such rules and regulations, supplementing general statutes, represent an unconstitutional delegation of legislative power, it usually happens that the general principle is applied in hit-or-miss fashion to each particular case as it arises. The New York labor law requires "good and sufficient ventilation" in factories.¹ No specific rules have been prescribed and the act is practically unenforceable.

Moreover, when a general statute is well drawn, the men who have worked out its provisions and selected the language in which to state them are in a better position to state the specific rules for the application of the act to particular instances than are administrative and judicial officers before whom it comes as a totally new and often unconsidered matter. The drafters of a workmen's compensation act, for example, if they have done their work well, ought to know whether free house rent received by an employe is to be included in the computation of his wages for the purpose of determining his compensation in case of injury, and if they fail to state in their act whether it is to be included or not, employers, employees, insurance companies and courts are going to spend a great deal of time in attempting to discover whether the legislature intended to include or exclude this item, and no one is ever going to know what the legislature did intend until some individuals have carried to the court of last resort a case involving the question, and then the chances are even that the court will guess wrong and that the intent of the legislature if it had been expressed would have been directly opposite. For example, take the Sherman anti-trust law, the meaning of which was in doubt for twenty years. There are many people who, if they had been placed in the position of the Supreme Court, would probably have guessed differently as to the Congressional intent.

¹ New York Consolidated Laws, ch. 31, sec. 86.

My point is not that statutes should provide for all conceivable circumstances. I do not expect to see a perfect statute. As was said by Judge Dean: "Laws seem to be born full-grown about as often as men are."¹ But this does not justify putting on to the statute books legislation which is obviously incomplete. The New Jersey Compensation Act² bases compensation on wages and contains no definition of the term "wages." The slightest consideration of the operation of this act would disclose to its drafters the absolute certainty that within thirty days of its enactment cases would arise involving the question, "How are wages to be determined?"

It seems foolish to omit such provisions merely to avoid what are called detailed provisions. Indeed, it is generally true that lawyers and other people who attempt to prepare written documents on subjects of which they know little prefer the use of general language, and it usually happens that the more consideration and study one gives to the preparation of a written document the less general language is found in it. Explicitness of language is in direct proportion to the writer's knowledge of his subject matter and its problems.

Commenting on the detail of some statutes, Frederick W. Lehmann, in his President's address before the American Bar Association,³ cited a Kansas act requiring for each bed in a public inn "clean sheets of sufficient width and length to reach the entire width and length of the bed, and with the upper sheet to be of sufficient length to fold back over the bedding at the upper end or head of the bed," and observed that the drafter forgot to require that the sheet be long enough for tucking in at the foot. These details may seem petty, but suppose that the statute had provided in general terms for sanitary bed coverings, would the administrative officers have carved out of this an enforceable rule which would have effected the purposes of the act, and what would the ordinary judge have said with respect to the meaning and effect of this act had it come before his

¹ In *Waters v. Wolf*, 162 Pa. 167.

² Ch. 95, *Laws of 1911*.

³ *American Bar Association Report*, 1909.
(196)

court for application? Would he not have quoted the rule that statutes in derogation of the common law must be construed strictly, and that as the statute said nothing about the length or the breadth of sheets it was not to be interpreted as interfering with individual liberty more than its language absolutely required?

Definitions are helpful in attaining precision, but they must be skilfully used. The New Jersey Compensation Act defines "wilful negligence" as "deliberate act or deliberate failure to act."¹ Literally, this means that a man can escape the charge of negligence only by careless action or inaction.

Blunders in legislative language are varied. They run from the ridiculous to the serious. Congress, for example, enacted: "That no sponges taken from (specified) waters shall be landed, delivered, cured or offered for sale at any port or place in the United States of a smaller size than four inches in diameter."² How many of our ports could answer the description of less than four inches in diameter? The Illinois Compensation Act for disfigurement of an employe, grants him one-fourth of *his* compensation in case of death.³ The second draft of a compensation act, prepared by the Pennsylvania commission, granted compensation to widows of killed workmen, and defined widow to include "only those who are living with the decedent at the time of his death." When it was pointed out that this suggestion of a plurality of wives sounded more like Utah than Pennsylvania, the commission was much impressed with the necessity for a change in the wording, and after retiring into executive session produced the following, which appears in its latest printed draft: The term widow shall include "only a widow living with the decedent at the time of his death."⁴ This may relieve the Pennsylvania workman from the insinuation of Mormonism, but if the intent is to give compensation *to the decedent's widow only*, why not say: "shall

¹ Sec. 3, par. 23.

² U S. *Statutes at Large*, v. 34, p. 313.

³ Act of June 10, 1911, sec. 5, c.

⁴ Industrial Accidents Commission of Pennsylvania, 4th draft of compensation act, art. II, sec. 6, cl. 10.

include only the decedent's wife, living with him at the time of his death?"

Language which reads smoothly does not always represent good drafting. As a member of Congress put it, "Like Browning's poetry it may be well said and yet not say anything" to the ordinary reader.

The framers of important legislation should have the benefit of the experience of other states and countries in the same field. They should know the legislation of other states and its operation. Mere copying of foreign legislation will not suffice. Drafters of American compensation acts have repeatedly copied from the English act the words "injuries arising out of and in the course of employment." Apparently, it is assumed that the meaning of these words has been fixed by the English courts and is well understood. Prof. Francis H. Bohlen recently demonstrated¹ that this phrase, instead of having a definite and fixed meaning, is one of the most prolific sources of doubt and litigation in the English act. Mere copying in the Nevada Compensation Act resulted in putting into the very first section an important reference to "the preceding section of this act."²

Legislation is constantly enacted in ignorance of existing laws. For example, on February 14, 1903, Congress passed an act transferring the immigration duties of the Secretary of the Treasury to the Secretary of Commerce and Labor.³ On March 3 of the same year Congress passed an immigration act, in many clauses of which duties were imposed on the Secretary of the Treasury.⁴ A joint resolution was subsequently necessary to correct this blunder.⁵

There appears in a congressional appropriation bill an appropriation for publishing the laws in newspapers, although such publication had been expressly prohibited four or five times during the same session.⁶

¹ *Harvard Law Rev.*, vol. 25 (1912), pp. 328, 401, 517.

² *Laws of 1911*, ch. 183, sec. 1.

³ *Statutes at Large*, vol. 32, p. 825.

⁴ *Ibid.*, vol. 32, p. 1213.

⁵ *Ibid.*, vol. 33, p. 591.

⁶ *Ibid.*, vol. 18, p. 349.

In 1912 the New York legislature amended a section of the labor law. Later, at the same session, the same section was again amended without reference to the previous amendment.¹ The question arises whether the amendment incorporated in the first act of 1912, which is not contained in the second amendment of 1912, is or is not part of the labor law of the state?

Another and frequent type of bad drafting is the statement of the same idea in different words in the same act. In one section of the New Jersey Compensation Act there are no less than four different methods of stating the same computation of time.²

The obvious suggestion for the correction of many of our political ills, including unscientific statutes, is the election of better men to the legislature. A good legislator, however, is not necessarily a good drafter; and a legislator who is a good drafter is so busy with legislative policies on a host of subjects that he has little time to devote to the wording of laws. Mark Twain said that a man who attempts to study German has not much time for anything else. Drafting statutes is much like learning German.

John Stuart Mill declared: "There is hardly any kind of intellectual work which so much needs to be done, not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the business of making laws."³ Our legislators are elected to voice for brief periods the political sentiment of their communities and their attention is largely confined to this field of activity. Having in mind the statement of Mill, it is apparent that the selection of legislators by the elective method does not insure the selection of men of "experienced" minds for making written law; that the frequency of election fails to assure any opportunity for a prolonged experience in lawmaking; and that the nature of the political work which legislators must perform to gain and keep their seats precludes them from and unfits them for "long and laborious study."

¹ *Laws of 1912*, ch. 337 and ch. 543.

² *Laws of 1911*, ch. 95, sec. II, par. 15.

³ *Representative Government*, People's Edition, 1876, p. 39.

Great Britain has solved the drafting problem partially by creating the office of parliamentary counsel, by whom all government bills are drafted. Practical legislators and lawyers in this country have an indefinite notion that the creation of an expert official drafting agency would in some way interfere with the ordinary functions of the legislator. The real function of the legislator is to make known the social need for a given rule of law at a given time. It does not necessarily include the phrasing of that rule. Originally, the English Parliament petitioned the king for the enactment of laws; the king and his counsellors, if the petition were granted, determined the phraseology of the law. Representative legislators elected by popular vote may voice the wishes of their constituents with respect to the general policy which shall govern the community on any particular subject; but, ordinarily, they are not sufficiently skilled in the handling of the English language as an instrument of law-making, and in the knowledge of existing constitutional and statute law, to determine the precise phraseology of the rules which shall make effective the policies so determined upon.

The consequence of using unprecise language in a statute is a loss of that effective control over the policies of legislation which the legislature is empowered constitutionally to exercise to the entire exclusion of both the executive and judicial branches of the government. Moreover, a vast amount of time and painstaking care is expended by administrative officers, lawyers, and courts in the determination of the exact meaning of a statute or of its words or phrases. In all but one or two of the cases which have been litigated under the California Compensation Act during the first year of its operation "the issue was upon the construction of the act and not the fact of disability or the extent of the injury."¹

The conclusion seems inevitable that every legislative body ought to be supplied with a force of carefully-trained lawyers whose duty it shall be to give attention to these problems before a statute is cast in its final form.

¹ Article by A. J. Pillsbury, member of Industrial Accident Board of California, in *The California Outlook*, Saturday, Oct. 5, 1912.

Definite proposals are now being made to furnish legislatures with expert drafting assistance. Several states, notably Wisconsin and Pennsylvania, have drafting and legislative reference bureaus at the state capitol. At the last session Congress gave serious attention to a bill creating a similar agency at Washington.¹ The American Bar Association has just created a special committee on the drafting of legislation to study existing agencies for the rendering of technical assistance to legislators in the preparation of their laws, and to report its recommendations to the annual meeting in 1913.²

Legislative reference libraries are doing excellent work so far as they go, but the drafting end of their work has not been so well developed as the collection and indexing of printed materials. This may be due to the fact that the lawyers are slower than the political scientists in catching up with modern tendencies.

Another device of which frequent use is now being made is to take the preparation of important legislation out of the hands of the regular legislator and entrust it to a legislative commission. This plan may or may not be effective for good. The commission, like many other governmental agencies, depends for its usefulness on the men who constitute it, the time they devote to their work and the men to whom they entrust the actual preparation of their bills. If a skilled workman were to do his work as carelessly and with as many blotches appearing over the whole face of it as appear in some of the compensation acts drafted by commissions, his employer would not hesitate to discharge him without pay or send him back to do his job over again.

The wise solution of this problem of drafting American statutes will do much to relieve administrative officers and courts of

¹ *Congressional Reference Bureau*: Hearings before the Committee on the Library, House of Representatives, Feb. 26th and 27th, 1912. (Published in pamphlet form by Government Printing Office.)

² The members of this committee are: William Draper Lewis, Philadelphia, Pa., Chairman; Samuel Untermyer, New York, N. Y.; Louis D. Brandeis, Boston, Mass.; Frederick W. Lehmann, St. Louis, Mo.; Henry C. Hall, Colorado Springs, Colo.; Thomas I. Parkinson, New York, N. Y.; Ernst Freund, Chicago, Ill.

vain efforts to discover legislative intent where there is none, or where it is confused in a mass of ill-chosen words, and will remove one important cause of the discontent which has been made the basis for the proposal of popular recall of judicial decisions affecting the constitutionality of state legislation or the recall of judges rendering such decisions.

I have no panacea for the ills of legislation. I have no scheme to suggest for the production of well-drafted statutes. I know of no device or organization which can be depended upon to provide us with good drafting. Official drafting and legislative reference bureaus are not of themselves sufficient; machinery will not run without power. In the last analysis the problem is to secure men of training and experience who will devote their professional careers to the scientific formulation and development of our written laws. In the words of E. W. Smith, Esq., president of the Pennsylvania Bar Association, the drafting of a statute is not a "pastime for a summer afternoon."¹ In many ways preparation of statutes, because of the increasing quantity and broad effect of our statute law, is even more important than the judicial function which operates only on controversies as they arise between man and man. Again, Mr. Smith says: "Legislation is necessarily fragmentary, unless it is prepared by skilful lawyers, familiar with the subject, who are ready to devote much time and thought to its preparation. But it is foolish to assume that all lawyers can draft statutes. Such work requires a concentration of mind and of expression that few men have." Until we are impressed with the necessity of having our statute law drafted by such men, and until we find the men, we shall continue to find in our session laws numerous examples of legislative blunders, some of them amusing, some pathetic, and unfortunately many of them serious.

¹ *Pennsylvania Bar Association Report*, 1911.

THE INITIATIVE AND REFERENDUM¹

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IT is very fashionable on the part of those who consider themselves conservative and given to test the safeness of things, to look upon the initiative and referendum in this country as a political fad, a part of a political disease of our people. They think this a phase we shall have passed through in a comparatively short time to return to saner methods. Yet it seems to me that those who console themselves about the progress of this institution in such a manner are taking a most superficial view. If I read our present situation as a nation aright, I believe we must see in it the awakening of a much deeper political consciousness than we have hitherto had. Heretofore our life has been occupied with economic interests, and the political factor, strident as it was at times, was nevertheless superficial—the old marching campaign was its emblem. We did have times of important political action, but in general we were more concerned with economic life. I consider the movement for the initiative and referendum as a part of that great political awakening which the nation is now experiencing and which will bring about a permanent change in our political methods.

The old party caucus with all its trickery and all its sham has been so utterly discredited that we shall never be able to go back to it. We have seen with new eyes the old-time platforms, and they will no longer satisfy us. The cry of democracy is "More democracy." It holds that as the constitutions of the past have not worked well we must have them more democratic. We are outdoing Rousseau. He pronounced for democratic action even in a large state, but could not work out the

¹Read at the meeting of the Academy of Political Science, October 26, 1912.

necessary mechanism, and therefore stopped short of national democracy; he never got beyond federalism in his constructive ideas. Accordingly the modern initiative and referendum completes the Rousseauic theory, in that it considers the nation a unit, makes use of the modern advances in communication and views the electorate as one body capable of acting together.

We shall have to go through this second phase of Rousseauism. The convention phase was put to the proof during the French revolution when the older Rousseauism was thoroughly tested. Now it will be tested in all its completeness by making the people the primary factor in political action. This brings up the question of certain elements of human nature, according to which political institutions are viewed not as instruments, not as elaborating energy that already exists, but as virtually creating new energy, as if new virtues could manifest themselves through them. That is expecting too much of any institution. There exists in a people the political energy, virtue, consciousness, which seeks for a vent, which wants to manifest itself in action; and if there are impediments, institutions that dam up such energies, there will be an outbreak of some kind.

To a certain extent the energy of public opinion was hampered by our institutions of the past, and yet it would be too much to say that by creating new institutions we shall give to the body politic a different energy. There lies the chief argument against the initiative and referendum. It seems to demand too much, to consider the people as a body able to initiate, having the constant energy to watch the affairs of the state and judge their details, as well as to make themselves masters of the legislative situation. That is where the fault lies in my opinion—in the extreme, the radical policy of the initiative and referendum. There are many functions in the state. There is the function of deliberation, of judging, of taking administrative action, and to think that the function of voting in itself can take the place of any or all of these others and make them unnecessary, is expecting too much. Voting has often been used for the purpose of assisting legislation; it was used even in the Romans' day, but then there was always a clear alternative, yes or no—

a point that ought to be worked out and thoroughly. But we desire to go beyond that; we desire to have the consciousness of the people enter more intimately into the work of legislation, and yet we are expecting too much of this reform when on the one hand we believe that a popular vote can take legislative action in its fullness and completeness and thus virtually supersede the legislature, and on the other hand expect from it the political regeneration, the creation of new political forces, energies and virtues.

With these reservations, however, I consider the initiative and referendum as an institution that carries within it a great promise for our commonwealths, one that ought to be utilized and taken advantage of, and that cannot be brushed aside.

Throughout the world parliamentary bodies, have been a disappointment in not coming up to the ideal of liberalism, in not being the "councils of the wise," in which after due deliberation the best interests of the body politic are expressed in the form of law. That is not the nature of any legislative body, not even of that most excellent one, the British Parliament. Too much was expected of this institution, as of every institution when first introduced to the world. Now the tendency is in the opposite direction. In England even it is the elector that has direct relation with the controlling interest, and Parliament seems hardly more than a registering agency to record the will of the electorate and keep the ministry in power. The old dramatic struggle for influence in the House of Commons that lent life and interest to the political action of England during the greater part of the nineteenth century has almost passed away and it is now carried on before the electorate. But Parliament has not lost its importance, because it is the place where energies converge, where opinions are formed, the place for the promoting of policies, and it remains by far the most powerful and interesting body of legislation in the world. How different with our state legislatures! They have become so discredited that they offer no field for political action of a high type, and so they naturally became the instruments of the "great interests" whose leaders alone have been far-sighted enough to see how important the political power therein con-

centrated really is. Now it is in this connection—in making the body of the electorate conscious of the vital importance of state legislation—that I believe the greatest value of the initiative and referendum lies.

My expectation is that its effect will be as follows: This institution will assist the people, the body of the electorate, in the development of its political consciousness; the consciousness of power which it brings will assist in that direction. Second, it will make the body of the electorate more familiar with legislative problems and more interested. In Athenian democracy, every citizen was supposed to take part in all the functions of government, to judge, administer, elect. That is no longer possible, but nothing will so train the electorate to see the difficulties and problems of legislation, and to form an intelligent judgment about them, as having to solve those problems itself at times. Moreover, it will increase the interest of the people in the legislatures, as being organs which are constantly engaged with dealing with these important matters; and finally it will serve to increase the sense of responsibility of these bodies. We cannot of course hope to get that direct sense of responsibility which is the key to the English system, where the possibility of a dissolution and an appeal to the nation weighs constantly on Parliament and every member thereof; but the referendum, too, is an appeal to the electorate, and the adoption of the proposal rejected by the legislature in a measure parallels the return to power of a British "Opposition." At present there is no adequate way in which the electorate can express its concurrence, or its disapproval, or its indignation at what has been done. General elections are not fitted for this; at the most they may take out an important issue, make it a matter of general interest, and submit it to the people.

I have not time to go into discussion of the details of legislation thus far attempted, but if you will bear with me I will point out one or two essential matters. The legislation of Oregon to my mind is attempting too much. It expects of the electorate a constant exercise of legislative action and if this expectation should be met it would mean a removal of the

center of deliberation from the halls of legislation to the popular forum. Now the Oregonians who are the most ardent supporters of this system always protest that they did in no sense intend to discredit the legislature. Mr. U'Ren said it would be far more creditable to go to the legislature after this reform has been completely established than ten years ago, because it would no longer be *prima facie* evidence of corruption and low political motives to be a member of that body. But the actual tendency is different. If there is to be a constant exercise of the legislative function by the general electorate it cannot be expected that the legislature itself will continue important enough to deserve the attention and coöperation of really able men. In the suggestion that all that is really necessary is a council to work out administrative measures to be submitted to the electorate, we have an explicit admission of the tendency to eliminate that body which our own experience and that of other countries has shown to be of value. Between the growing administration and the electorate, there would be no intermediary, no body of men somewhat above the ordinary political intelligence, somewhat more experienced, to judge of measures which the administration suggests, to interpret them in a way to the electorate; and at the same time to give the administration assistance in getting close to public opinion and the needs of the state; the inevitable result would be a close bureaucracy. California has tried to encourage the legislature by giving it the Swiss alternative, so that it may either send a measure directly from the initiative to the electors or submit at the same time an alternative measure of its own. This is apt to cause a good deal of confusion: as has been cynically remarked by the *Evening Post*, the electors would usually vote for both measures, and then that measure which carried the majority would be declared law!

Another defect appears when laws passed by popular vote cannot be repealed except by a like vote. We have already constitutional law and legislative law and we then should have popular law in addition. Logically any action of the legislature which superseded a part of the popular law must be considered void by the courts. The complexity which is intro-

duced into our system through the fact of a judicial review would be emphasized by the California arrangement where you have three categories, legislative law, popular law and constitutional law, one standing above the other, one prevailing over the other. This is unnecessary. The Oregon courts have refused to give the popular law a higher rank than the legislative; the proposed provision in Washington is that popular law may be repealed after two years, but not before, by legislative action. It seems to me it is best to place all law on an equal footing, allowing to the popular law its prestige as having been passed on by the electorate, but giving it no artificial validity, which only introduces confusion and complexity into our system. While speaking of the California system it ought to be said that the Californians believe that the complexity of their system will be reduced, because hitherto they have amended their constitution so frequently (sometimes fifteen or sixteen amendments pending at the same time) that it became a vast code of legislative matter. After the introduction of the initiative and referendum, changes that are popular may be made without being put into the constitution, and there will not be so much judicial interference with legislation. That is their hope, and yet their provision with respect to giving a special degree of validity to the popular will seems to run counter to it.

The proposed law of Wisconsin is based on the idea that the initiative and referendum is to be an agency for assisting the legislature, but in no way making it superfluous. Accordingly any measure that is introduced into the legislature, whether passed or rejected, but only such measures, may be referred to the electorate. Thus every bill that goes before the people must have had the benefit of being discussed there and acted upon, whether favorably or unfavorably. In this way it is intended to protect the importance of the legislature, and even to increase it by centering there the public interest. If in this connection we consider the growth in importance of state governments, we see how an opportunity is given for a governor, if he is a constructive statesman, to have his measures introduced in the legislature, to have it known that they go with the endorsement of his political judgment, and if they are defeated in that body to have them called out and referred to the public.

It is not believed that the people will be constantly legislating. That is where most of the opponents of the system argue wrongly, one might almost say deceitfully. The recall is a power to be used only very rarely, and the referendum is, perhaps, best understood as giving the electorate the right and power to make itself felt at any time without revolutionary action. We are living at the present time in a period of almost revolutionary energy, but that will pass away. These energies are not permanent; it is necessary to count upon the steady interest of the public in politics, but of that we cannot expect too much. Our constitutional machinery ought to be so adjusted that the force of public opinion would be sufficient to start, stop or control it. There ought to be means by which the public can obtain a specific law which it demands and which is blocked by our state legislatures.

The initiative and referendum will introduce clearness and logical sequence into our political action, and center the public interest on legislative problems, but will not mean that every matter of legislation will be laid before the electorate to the wearying of political energies. The Wisconsin legislation is an experiment, but one which bases itself upon the premise that the legislatures are performing a function that cannot be fulfilled by mere voting, and that this function must be strengthened, elevated and purified but not extinguished or passed over to a body which cannot deliberate as a legislative body can. It is thus that I consider the initiative and referendum to be a reform in true harmony with the great movement which is passing over our nation at the present time. There will be a liberation of political energies when it is possible for the energies at any time to make themselves decisive. The initiative and referendum will have a clarifying and quieting effect, because as everybody knows, the people are essentially conservative. If they have the knowledge that it is in their power to ask and obtain, it will be a safety valve in the most dangerous periods through which our republic may have to pass. And in all times it will be an education for the people, just as it is in the English democracy, to feel that at any time they may have to vote, and that any important measure may be brought to them for their pronouncement.

THE DIRECT PRIMARY VERSUS THE CONVENTION¹

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IT is with some hesitation that I appear this evening to speak upon a subject so vast and so imperfectly understood. The word "primary" has not until recently been used as we are using it now. We have had primary colors and primary affections and prime mess beef; it is an anomaly that such a new use of the term should have been created, and a demand caused for a new dictionary.

I feel sensibly the danger of using new words, even the most ordinary, lest they might be misunderstood in their political connection. These are the days, at least this is the week, when nobody can use the word "liar" without somebody indignantly answering: "He is nothing of the kind; why does the ex-President attack the senator from Pennsylvania?" You can't say "primary" without somebody shouting: "He's not a primary force, there are a great many others." I must say that the attention which is paid by the American public to one of its public men makes me think of the Sunday school into which the brisk minister came and said, "Now, children, as I came along I saw a wonderful creature. This creature was sitting in a tree. It was sitting on a bough. It was a creature with a bushy tail, and it was holding a nut in its claws. Now can any of you tell me what that wonderful creature was?" And there was only one child who could answer and he said: "It was God." Well, there is more than one man in this country, more than one candidate, certainly there is as much as a candidate and a half and possibly there are two.

We are not speaking to-night of candidates or politics, but of primaries, and in the discussion between Senator Brackett and

¹ Address at the dinner of the Academy of Political Science, October 25, 1912.

myself, I understand that we are to follow the plan of Irish "repartay" "where you say to-day what you are going to think of to-morrow." So the address of Senator Brackett will upset what is now being said. But Senator Brackett and you and I and all other sensible people will agree that we are simply discussing a practical question, that what we desire is to secure the expression of the will of the people in their nominations, and then to secure the choice of those who will carry out the will of the people. To that end we desire to nominate persons who really represent the party, and to destroy all that tends to interfere with a genuine expression of popular will.

For this discussion I have singular personal qualifications, having been elected by a state-wide primary in a state where I could not have been elected in any other way, then having served in the greatest nominating convention ever held,—the greatest and perhaps the last—and being now a candidate for office by designation of a political committee of a party which has no political existence recognized by the laws of Massachusetts. Thus you will observe that I have cultivated impartiality; whatever may be the decision of this distinguished jury, I shall be acquitted.

We have before us the two rival systems of the convention and the primary, and I will try to take the wind out of the sails of the gentleman who is to follow by discussing the advantages of conventions. The first one is that the United States has somehow got on with the political convention, and a large number of distinguished men, lovers of their kind and excellent public servants, have reached the public service by that road. Then, the convention is a means, though perhaps not the only means, of a common acquaintance and understanding, which is of great significance and value. In the next place, conventions have frequently reflected the wishes of the voters, and the convention is in harmony with the representative system; nobody can deny that. Additional advantages are that conventions balance the ticket geographically, a result impossible to attain otherwise; that conventions allow for second choices; that the convention has the making of the platform by tradition, and thus the committing of the party to a variety of reforms and

principles—upon which it usually proceeds to turn its back. Further, there is nothing that is so much fun as a political convention. It is more sport than a baby, noisier than a football game, more complex than a woman's club; it cheers the voter, benefits the newspaper proprietor, and leaves squashy footsteps on the sands of time.

Nevertheless I ask you gentlemen before me, from personal experience, if you do not agree with me that there are serious disadvantages in political conventions, which have tended to bring them into disrepute. That disadvantage which appears most prominent is the disorder and turmoil of conventions. This is not inherent, but is due largely to the practise of national and state conventions of holding meetings in enormous halls in the presence of hundreds or thousands of spectators, frequently put there to influence the work of the convention. On the floor there is confusion, noise, cheering, uproariousness. Conventions have of late grown much noisier, probably from the habit on the part of some of the members of attending college athletic sports; and the convention is not a place in which to learn good manners or sobriety of speech.

It ought to be said, however, that the disorder of conventions is not the novelty which some people suppose it. In the Republican convention in 1860 there was just such a hullabaloo as in 1912. A "howler" was employed to aid the cause of Abe Lincoln. In 1856, when Fremont was nominated, there was a great uproar; the picture of the candidate was shown and a salute of guns fired. There is always a possibility of stampeding a convention, for the thing has been done many times; but the shrewd political leader takes his precautions against that danger. I must say from a brief but intense experience in a political convention that I believe that noise and uproar and pictures make about as much difference to a convention as the rooting of the fans makes with a first-class pitcher. Few conventions can be stampeded by the audience.

Another indictment is the fraud in which conventions are so frequently engaged. That is not a subject of which respectable people like the members of this academy have knowledge, but when you get inside politics you discover how county and state

and national conventions are manipulated and furthermore how they are linked together under the elaborate representative system. That system is the growth of natural conditions. The county convention usually elects to the state, and the state to the national convention; so if there is any taint of fraud or violence it goes all the way up; the state convention is carried in scores of cases by fraudulent county conventions, and the national convention may be affected in the same way.

The reason why such fraud and violence are possible is largely that political leaders have looked on politics as a game with certain rules which you are at liberty to ignore if the umpire is not looking; and when a delegation is stolen the other side acquiesces, thinking it will do the same thing next time. Anyone examining the contests at Chicago from the southern states must be struck by the fact that almost every one of the delegations down there is tainted with irregularity of some kind.

I say irregularity. We must never forget that regularity is a political term with a special definition. In politics the regular is simply the man or committee or convention which is recognized by the next highest authority as being the proper thing. That county convention is regular which is manipulated by people in accord with the state committee; that state convention is regular which is so recognized by the national committee of the party. There is no such thing as absolute regularity, because in the development of American parties they have been treated as private clubs, and until very recently there has been no legal ascertainment of what is regular or irregular.

I do not mean to say that a considerable portion of all the conventions is stolen or manipulated, that the wrong people are admitted and the right kept out; but within about ten years in Massachusetts we have had two disgraceful state conventions. In one a faction got possession of the admission tickets and gave them to their friends, took possession and nominated the candidate. The state courts dealt with that and disallowed it. Another convention was stampeded by one of the factions staying in the hall all night; when morning dawned they had possession, gave out the tickets, refused to be dispossessed, and con-

trolled that hall; the main part of the party trooped out to another place and two conventions were held at the same moment. I will not say which was the proper one, but they could not both have been the regular expression of the party.

In national conventions there has been much less difficulty; for the national convention is under the limelight; membership is highly prized, partly as a badge of party honor, partly because of the pleasure of being present, partly because of the glittering badges with which you paralyze your neighbors when you get home. In any case membership is eagerly desired. There have been very few accusations of foul play in national conventions in comparison with the state conventions. That was why the country was so aroused by the difficulty at Chicago in 1912. As a participant it struck me that the real issue was not the fortunes of this or that candidate, but a rivalry between members of two sections of the party, each asserting that it had gone through a proper process for ascertaining and expressing the opinion of the voters from whom it came.

Another reason why conventions have been losing ground is that they have been attacked by "conventionitis." You know how you may have within your person a latent need for an operation for appendicitis; you go on for years, and one day you wake in the morning very uncomfortable, and off you go to a hospital and there is an operation. That is about what has happened to the convention. Conventionitis has been latent all the time; but all of a sudden there was a terrible attack and the whole country became aware of it. The patient groaned fearfully; experts were called in and the operation has been performed—but we do not know what the state of the patient is now. There was a man in Indiana last winter who was taken to the hospital with typhoid fever; next day paralysis set in; the day after, he was operated on for appendicitis, and they said he was doing well. Some political parties seem to be going through such an experience.

The next great difficulty is the bosses. If there is any boss present I beg to say there is nothing personal intended. Out in Colorado they had as speaker in the legislature a rather impatient man. One day a member rose solemnly to declare

that the record of the previous day was incorrect and moved that it be corrected, and the speaker answered him sternly: "Young man, don't you cast no aspirations on the help in this house." I won't cast no aspirations on gentlemen who are carrying on the politics of the country. Bossism, so far as it means control of parties, is a perfectly reputable pursuit, and there is no reason why a man should not make it a life-work provided he plays the game above board and has a majority behind him. The real difficulty comes with the proprietary bosses, men who are working in the dark to create something which shall be opposed to the real desire of the people whom they represent. The boss convention is intolerable because of a sinful secrecy of action; the boss knows what is going to happen; the voter does not, and still less does the member of the convention. The efficient boss develops a military system in which a hundred to twelve hundred delegates elected in the ordinary way by party constituencies or conventions are confronted with the mystery of the convention. It seems incredible that such a body of intelligent men should submit to do as one man tells them to do; when that happens it is not a convention, it is a phonograph.

Another difficulty with the convention is the feudal side of it. The truth is we are always illustrating what the eugenic people call the reversion to an original type, always going back to the middle ages in our politics. We have substantially a series of feudal systems, in which you, the voter, put your hands between the hands of the district captain; the captain pledges allegiance to the county chairman; the county chairman accepts the suzerainty of the state boss. There is a lordship and an over-lordship all the way up; you perform military service—that is, you vote—and your over-lord protects you. There was in Europe a century ago, a breaking-up process called immediatization, by which a man jumped over the lord and went straight to the king, and the primary is a system by which the candidate may come into direct communication with the men who are to elect him.

The convention system has broken down; it is sick and about to go to the hospital because of the lack of a tribunal for settling

in a fair manner the cases of contest. They have been settled sometimes by the chairman, by the executive committee, or by the standing political committee, but frequently without any reference to the real merits of the case, the ground of decision being, not how the members are chosen but whether they will vote for A or for B; that is, the conventions are not really representative. They give rise to the question whether the whole constituency shall nominate or a self-selected part of the constituency.

Of course everyone is aware that there is such a thing as an unbossed convention; New York gave us a sample in 1912. Yet people look with wonder at the idea that there should be an unbossed convention. To arrive at that result you must get rid of a large part of your customary political machinery. The children at school were one day asked to make a sentence in which should be used the rather unfamiliar word "disarrange." One little Italian girl managed it. She said: "Li padre dissa morning fin de range notta burn; he say, 'Damma dissa range.'" I put no words in the mouths of persons responsible for conventions when they find a disarrangement of their system.

The convention system is visibly in a state of collapse, as was revealed through the contests at Chicago. These contests in part turned not on the question whether delegates had proper credentials, but on the right of a state to regulate the election of delegates to a national convention. In the course of that discussion it was discovered that a considerable number of delegates sat there through the workings of state primary statutes. I was one of those persons, and hotly resented it when Sereno E. Payne declared on the floor that any state law that was contrary to a rule made by the Republican national committee was no law. That raised the question of which was servant and which master, convention or voter.

If conventions do not work well, what of the rival system of primaries? Let me enumerate and admit the very serious disadvantages of the primary system. It means frequency of elections and a chronic difficulty as to second choices. It undoubtedly facilitates the nomination of weak men, raises a

difficulty about the platform, which usually has to be made in some new fashion, and it has introduced a new element of expense and difficulty and hard work that was never heard of before. The legitimate expenses of a candidate under the system of primaries are considerably greater than in the old system. Governor Deneen spent \$200,000 this year in the primary election. To make a man known to all the voters by a postal card costs \$12,000 in Illinois. Such expenses are legitimate, but out of proportion to the means of ordinary men; and it is clear that if the system is to be worked in that way it must break down.

At last we reach the advantages of primaries. Shall I say they are so clear to an intelligent audience that they do not need enumeration? First of all, the system enlarges the field of public service by increasing the range of men who can have some hope of getting into office; it even allows some cranks to get in. We need men who have the complete belief that the particular reform on which they are engaged is necessary to society; and such men we call cranks. It would do every legislature good to have one or two cranks. Of course they must not be so cranky as to differ seriously with us! The socialist, for instance, is simply a man who thinks on social questions differently from the men in your club; and the cranks are simply those who are more cranky than their neighbors.

A further advantage of this system is that you get unbossed men. You may recall the method by which the Yale sophomore achieved "Skull and Bones." He broke into their house and found out all their secrets, whereupon they had to elect him. Many men have got into the organization by showing that the election could not be carried without them. But under the system of primaries it is possible for men to aspire to office and to reach it without being dependent on the good will or adoption of a particular individual. Not only are many more men candidates, but many others have hopes; and the hopelessly hopeful can by the primary be brought to realize that they cannot be nominated. To be sure, the primary system involves numerous elections; but when people feel there is a great issue and a great man before them, they find

no difficulty in getting out to vote. That means that there is a wider chance of accomplishing ends through the primary. Furthermore, a primary on delegates to a convention involves the discussion of a candidate's work and qualifications before the convention meets, if the convention is retained.

I think there is nothing more hopeful than the kind of campaign we have had lately, the persistent effort to persuade the voter by literature, public meetings and an appeal to personal loyalty. In my experience no campaign, certainly none since 1860, has made the people of the United States so intent on these problems. It is an educative process.

The primary system simplifies the electoral machinery. It strikes at the places where the difficulties are greatest. It eliminates a great number of small conventions, and greatly diminishes campaign contributions and expenditures of an unlicensed kind. Election expenses have seemed to increase, but it is publicity of accounts that makes it seem so. The investigation at Washington shows how much smaller are the outlays this year than in any campaign for twenty years. The primary system almost prevents carrying contests to a convention. If more states had adopted the primary system, there would have been no row at Chicago, for if the delegates had all brought certificates of election from their state officials, there could not have been any difficulty in their taking their seats. The method shuts out dark horses. It does not always exclude men of infirm character, but it is almost impossible to nominate an unknown man. I have heard of a man in Nebraska with no friends or following, who got himself at the same election on the Republican, Democratic and Socialist tickets and got 2,000 votes. Still 2,000 is far from a majority in Nebraska.

Finally, the great merit of the system is that it weakens the boss's power. The boss is a condition, not a theory; he exists because the complexity of modern politics makes him almost essential. The boss is also the man who has reconciled the executive with the legislative power. Nevertheless the boss is not omnipotent; if you can alter the circumstances by which he gets illicit power against the public, you can to a great extent destroy that power. The primary furnishes the best way of

finding out whether the boss is a boss. Nobody outside of New York, of course, knows who is the best candidate for the governorship of the state; but one thing is certain, neither of the old-party candidates now in the field in this state would have been nominated but for the desire to "pander to the better elements of society."

The primary makes it possible for men to enter absolutely against the boss. Governor Johnson in 1911 defied the political and railroad machine; but he could not have done it except for primary laws. Is not the the main reason for opposing the primary system the fact of its being unfavorable to bossism? Otherwise why is it so difficult to find the bosses who want it? Do you think that such shrewd men would have allowed a device like the primary to pass by them if they could have controlled it? Do you know a boss who works for this system on the ground that it makes him safer in his power? We must not suppose that the primary system will do everything. There will be selfish men and thieves and demagogues still. A maker of patent medicine years ago made a fortune by advertising that his medicine would not cure "thunder humor," and the apparent honesty of this exclusion attracted everyone's attention. Sick people commented on it, and confident that they had not got "thunder humor," felt safe in buying a bottle to cure what they had got. So I will say that the primary will not cure everything; perhaps it will not cure boss-humor, but it will infallibly cure some of our political evils and will build up a more nearly democratic community.

THE ADVANTAGES OF THE CONVENTION¹

EDGAR T. BRACKETT

Senator from the Thirtieth Senatorial District, New York

WHATEVER I say here to-night is said from the standpoint of a countryman and a republican. I could not divorce myself from those characteristics if I would, and I would not if I could. I make this statement because I want you to know the point of view from which I approach the subject under discussion. I hope that this confession will not be taken as, at most, more than presumptive evidence of criminal instincts on my part.

At the same time I assure you that it is as nearly as possible a matter of indifference to me personally whether the system of direct primaries is to be put or kept in force or not. I do not much care who formulates, or what are, the rules of the political game, providing only they apply alike to all of us. Then, too, I have come to that time when I may, and perhaps love to, liken myself to the weather-beaten Palinurus who has furled the sail and put aside the oar, and no longer feels any personal interest in the rules governing navigation.

This matter of direct primaries, or the reverse, is only a question of methods, a matter of difference as to how we shall take one of the steps in reaching a proper conduct of the affairs of the body politic. The direct primary never yet built a hospital to care for the wards of the state; never yet improved our common-school system; never helped solve the question of the congestion of population in cities; never assisted to prevent the spread of contagious disease among the people; never yet itself, as an end, was of the slightest consequence. It is a tool for the hand of the worker, and whether it fits his hand and best does his work, must be evidenced, not by the tool itself, but by the character of the finished work it does.

It is well, at the outset, to know with reasonable accuracy the

¹ Address at the dinner of the Academy of Political Science, October 26, 1912.

terms of the question we are discussing, It would be unfortunate that we should be rent in twain over the question, only to discover afterward that the differences were the outcome of a misunderstanding. Oliver Wendell Holmes, in one of that Breakfast Table series that delighted the students of forty years ago, tells of a religious quarrel resulting entirely from a difference of definition. Let us be sure that we are not falling into any like dilemma. If this system of conventions, a system that has given to the country and to the world the records from Lincoln to Taft, of the state from Seward to Hughes—if this system is to be put on trial for its life, with premonitory warnings of summary conviction and execution, it is at least right and decent to have the indictment against it clearly read and its terms understood.

Exactly what do those advocating direct primaries mean when they make their demand for a change from the convention system, that has served us so well for a half-century? Do they want only some system by which electors, now deprived of their political privileges, are to have them restored? If so, some of us, who are now opposed, will be found on that side, once we are convinced that any one is now thus deprived of political privileges, and that this plan will restore them.

But I take it, although I do not think that all the pros are united in it, that what is generally wanted when direct primaries are favored, is an abolition of physical getting together in caucus and convention, and an election within the party, surrounded by all the safeguards of an election between parties, where the elector may go, and without discussion, without meeting any one except the officials who are in charge, may there cast his ballot for his choice. If anything more than an election within the party is intended, if it is desired that members of one party may go into the primaries of another and there vote on the nominations of such other party, I refuse to discuss any such scheme as proposterous—as almost infamous. No plan is honest that permits a Democrat to participate in a Republican caucus, whose nominee he has no intention of supporting, or the reverse. But, assuming that I am right in diagnosing the demand as one for an intra-party

selection of candidates, we have a right to know just how some of you think this will better present conditions.

And, in asking this, those for whom I speak are not satisfied with the statement that the proposed scheme will down the bosses. This is not argument; it is mere assertion and presently runs to mere rant, and it is not satisfying. How will it down the bosses? Some of us have been engaged for some years in an obscure, small way, in seeking that very result,—I might add seeking it when a little help from some of those now vociferous in their denunciations of the bosses would have been grateful to us, and potent in result, and when it was not given. But that is detail.

It is said, however, that the change will down the bosses. Broad across one of the letters I received on the subject was the flaming slogan, "Direct nominations the cure for bosses." Oh, if it only were! I believe that I would order my ascension robe. If we could but believe that the adoption of this doctrine would really do the business and down the bosses—and keep any others from taking their places—if it were only true, I, for one—not one, Saul-like, suddenly converted, but with the conviction of years that the boss system is an unmitigated curse,—and those for whom I speak, would run like a bridegroom to his chamber to seize that boon, waiving in its favor everything not deemed essential to our system of government. But reflection and observation have convinced me that while direct primaries may change the personnel, they will leave the system of bossism more strongly intrenched in power than ever.

Where do you spell out the relief you claim, in any place where it has been tried? Do you find Wisconsin emancipated from bossism under the rule of La Follette? Is Kansas less boss-ridden under Bristow and Murdock than it was under Ingalls and Plumb? Is Iowa freer in its political action between the knees of Cummins and his cohorts than it was under Allison and Shaw?

The only other thing I have heard urged in favor of the change is that it will result in a wider participation by the people in the selection of candidates, will insure a more general participation by the people in* matters political.

I confess I can see no such prospective result. The problem for a decade has been to keep the people interested enough so that they will register and vote, and the cry has been that they have too much politics and will not attend. And so we have abolished spring town meetings and have done everything possible to render it easy for one to exercise the electoral franchise. How then the addition of another election day to the ones we already have will result in calling out a more general attendance and participation, it is difficult for the ordinary mind to comprehend. You do not satisfy the man who is complaining of overwork by doubling his hours of labor, even if you couple it with the suggestion that he will take more interest in his work.

But some one says that some of the great states in the Middle West and the Northwest have legislated for direct primaries, and it is safe for the Empire State to follow. Let me recall a little of not very ancient history to you. I do not stand here unappreciative of the intelligence of the people of those states. I make no criticism of their efforts nor of their conception of that wherein they think they find their greatest good. If nothing else, a recollection of the years during which I lived among them and loved them, was one of them, would close my mouth to any harshness of comment upon any action of theirs, even if I believed that, like the men of Athens, they are continually going about seeking some new thing. But, when you ask us to accept this novelty into our system, because of their action, I recall, as well within my personal recollection, that by the same sign we should have accepted their delusion of fiat money with all its crazy attachments and consequences, that a little later came the vagary of the free coinage of silver at the ratio of sixteen to one. I recall, too, that in some of the states having direct primaries, they have also the referendum and recall, and that wherever they have any one of these methods, they mean to have them all. If to-day you read into your party faith this doctrine of direct primaries, and it is followed by legislation, I warn you to prepare for both the referendum and the recall, for they will follow as surely as night follows day. Do not ask us to believe in this new faith, because

it has been adopted by Iowa and Kansas, by Wisconsin and Oregon. We must measure by our own yardstick and accept or reject by what is shown by it.

Is the voter under the system of caucus and convention stifled in his right to make known his wants? If there is any one here from Rensselaer County let me inquire of him if he thinks so. I choose to interrogate someone from that county because, being a next-door neighbor, I know something of what a nice little, tight little machine they have had there for a generation. As we used to describe our fences out on the prairies, it was deemed horse-high, bull-strong and hog-tight, and yet but a little time since it was beaten to a peanut in the primaries by no machine at all.

How was it with my other neighbor on the south, Schenectady, two years ago? That machine, with its captains of tens and its captains of hundreds, a machine strengthened and nourished by the canal, advised and helped by my friend Barnes, that beehemoth of organizers, in the same congressional district with it, was pounded into a pulp over night by men whom the machine deemed political nobodies and who, twenty-four hours before the convention, had not a semblance of a machine, not a thought of organization. Do you say that Schenectady needs direct primaries, to be properly represented in convention when you have that object-lesson before you? As I recall these incidents, do you tell me that caucuses and conventions are not responsive to public sentiment?

I want to stand for the proposition that never yet has the wisdom of man devised a scheme for ascertaining the will of a free people so good as that of caucus and convention. The opportunity to come together, whether in the little caucus in the barn back in the alley, or in the large convention, to look each other level in the eyes, to tell, each to the other, the reasons actuating one, and to press one's views upon his fellow citizens, this is a privilege which, if awake to their true interests, the people will never consent to surrender. It is a method ingrained and bound up in the conduct of every other business involving the concurrence of different individuals. No board of directors of any corporation can legally act without a

majority coming together. Separate concurrence by each director individually sending in his vote in writing reaches no legal action. And why? Because each member has the right to try to impress his views upon his fellows, and unless and until he has the opportunity to exercise that right, no result may be reached. Suppose that a jury, after hearing the evidence and the arguments of counsel, should separate, each man going to his own room and sending in his vote to the clerk—what sort of verdict would they reach in that way?

The overruling power has constructed us on certain lines. One characteristic of humanity is that the attrition of mind with mind will promote harmony and reach a satisfactory result. It is so in matters political as in any other activity. And while it is so, you never can get a better system than one that lets this attrition have its full course and result.

Is there any great religious body in the world that does not have its gathering? The Methodists come together every year in district conferences, and every four years in a general conference, country-wide in its sweep. The Baptists have their yearly meetings, the Presbyterians each year their general assembly. Rome has her consistories and her gatherings—and all because the wisdom of the ages has demonstrated that this is the truest method of ascertaining the wants of the members constituting the organization, and of conducting its business. There is scarcely a profession or a class of business that does not meet for conference. Shall we try to place the conduct of the business of a great party in a class by itself?

But, says Professor Hart, the convention is sick. I shall not deny that imperfections exist in the system. And I would medicine them powerfully, but the measure you proposeⁿ is not the true remedy to select from your political alexipharmics, to meet the case.

The greatest evil in our conventions, state and national, has been the adoption of rules cutting off debate. Where you have free debate, you have begun the extinction of the boss. A convention where full discussion is, or may be had, is almost of necessity an unbossed convention. It may be that a candidate or a measure can be bossed through the convention, but

the light there let in by a free discussion, renders later success so doubtful that such bossing will not be risked.

Given a convention of a hundred members, no boss on earth can carry it against fifty-one of such members, if they have serious wishes on the subject. If an elector has no serious notions on the subject, nothing will protect him. And, after all, I am not sure but that it all comes down to having serious notions and being willing to fight for them. There is no method of procedure that will make a lion into a sheep, or a sheep into a lion. And I want to lay it down as a postulate, that nobody is ever really bossed politically, who, way down in his heart (whatever he may say about it) is not willing to be bossed.

But it is said finally that the people want direct primaries and those opposed may as well yield, since opposition is useless. There are two ways of treating an agitation for some proposition you believe wrong. One is to yield to it, no matter how wrong; the other to argue it out and convince the people that it is wrong, or yourself be convinced. You cannot shirk the responsibility by saying what someone else wants. The one test for you is, is it right? And until this question is settled right, it is not settled at all, and, in its settling, it is your duty not to consider any chances of success or failure.

Better, like Hector, on the field to die,
Than, like the perfumed Paris, turn and fly.

It isn't the fact that you're licked that counts,—but how did you fight, and why?

I long ago reached the conclusion that whenever a majority of the people want a change that is within the lines of the constitution, they are entitled to have it. The minority must either accept it, or get out. But that fact does not lessen your duty or mine to oppose any innovation we think wrong, until it has been adopted—to prevent the change if we can. The trouble with the interpretation of the people's rights in these strenuous times is that to the undoubted and indubitable right of the majority to have what they want, there is attempted to

be grafted the doctrine that they have the right to have it the first fifteen minutes they think of it. No such right as that, constitutional or other, belongs to any one. It is no denial of constitutional government, it is no denial of the right of the majority to rule, to insist upon a reasonable time for reflection before changes are made. To the gospel of strenuousness there must be added the doctrine of thoughtfulness, or we have set sail on a dangerous sea.

Mr. Chairman, I believe in representative government; with my whole being I believe in it. I believe in it for government. I believe in it for party. I believe in it as giving the largest measure of individual participation, with the surest result of deliberation and reflection. And I want to say to you that the fathers who, in their wisdom, established representative government in this land, did not do it from any lack of knowledge of the workings and of the exact value of a pure democracy. When they came together for the purpose of framing a government which would protect them and their descendants, as they hoped and prayed, to the latest generation, they did not select the representative form from all the forms then existing or theretofore existing, because they were ignorant of any of the virtues or merits of an unmixed democracy. They had studied the democracy of Greece, and knew its history. They remembered its treatment of Socrates; they did not forget the history of Aristides. They selected representative government because they believed, not that it gave the people the widest measure of direct and immediate influence upon the government at every moment of time, but because they believed that it assured that balance in government, that thoughtfulness in its conduct, without which it would not be worthy of the name, or survive the first shock of the storm. They believed, in doing this, they had so combined the right of every individual to be represented in the government, that it gave to every one a voice and an influence, but that at the same time it prevented the government from the shock of yielding to every sudden craze that should sweep over the people. And so they studied Magna Charta; they studied the Petition of Rights; they studied the Bill of Rights; they studied the principles of the

common law; and in making their framework, they omitted not one of them that made for enduring liberty. The result was what we have, and what I believe and what the broadening experience and study of the years makes me believe more and more, was the wisest and best solution of governmental questions that ever mortal brain gave out. And, having done it, having established the form of government in which they meant carefully to preserve individual rights and, at the same time, to give that stability to government which they believed and I believe necessary, they "lived out their lease of life, and paid their debt to time and mortal custom," in the confident conviction that their work was wise and that they had succeeded where all others had failed.

The burden rests upon us—upon you and me, not as a general, far-off proposition, but here and now, not alone in the question we are here discussing, but in all the successive problems in government that come to us, to see to it that we neither do, nor without protest permit to be done anything that will diminish our heritage.

We must not be reactionary, but we must see to it that, no matter how rapid the progress, it shall be along lines that the experience of the past pronounces good.

STATEMENTS ON DIRECT PRIMARIES¹

JOB E. HEDGES, Candidate of the Republican party for governor of New York:

In the canvass of the state which preceded my nomination for governor at Saratoga, I visited nearly every section of New York, appealing directly to the voters without previously seeking the sanction of anyone. My belief was, and still is, that the voters are entitled to such a procedure. To have done otherwise and to have relied upon influence which entails rewards, was to have abandoned the right of free speech and free conduct. Belief in the people and in the direct primary, so-called, is shown in practise and not in rhetorical expression.

The announcement of my candidacy stated:

If elected governor I shall consider it a binding obligation to stimulate popular interest in public questions, and to endeavor to provide therefor, by law, means of expression, simple and direct. Whenever new conditions shall arise requiring statutory provision, enactments of the legislature passed in expression of the popular will and making government by the people real and not a fiction will meet executive approval.

That was my pledge then and is my pledge now.

The successful candidate for governor must command public confidence regardless of party affiliations. People must believe in his character, constructive ability and unqualified independence. The four most distinctive issues in the state campaign are: Personal obligation and individual responsibility in all social and political matters; honest, economical and efficient administration; the attempted solution of the high cost of living and a more practicable working out of the ends of social justice.

Within the category of the first clause falls the direct primary. With regard to this issue as with respect to the whole subject of primary and general elections, I tried to sum up the whole

¹ Read at the dinner of the Academy of Political Science, October 25, 1912.

subject in a speech at Madison Lake in July before an assemblage of farmers, and specifically with relation to the Ferris-Blauvelt primary law and the Levy election law.

If I am elected Governor I will urge an immediate repeal of the Ferris-Blauvelt primary law. It is involved, cumbersome, burdensome to tax payers, full of chicanery and obviously intended to sicken people of the direct primary idea. As a substitute I should recommend the enactment of a law which would permit the voter to express at the primary his preference as to nominations and party control by the simplest and most direct means, leaving, until the experiment can be worked out to a practicable conclusion, the convention plan as to governor and state offices. I should veto any act which made of either primary or general election ballot a puzzle. The ballot should be so simple that every voter could comprehend it. I should not favor any act which placed insuperable obstacles in the way of independent voting. As a Republican partisan I am absolutely and unqualifiedly in favor of a primary and an election law in consonance with the unmistakable meaning of the constitution. Such an act would not only be a recognition of the inalienable right of citizenship, but also, from my point of view, the very best policy in politics. I should endeavor, however, to make the people understand that no primary law is or can be of itself a panacea. At best it can be only a means to an end and an instrumentality of correction. No primary act can be effective to a greater degree than the willingness of the people to advantage themselves of the opportunity to express their preference. Further than this, a primary act is useful only as an instrumentality through which the people can readily punish their political leaders when those leaders disregard their obligation to their party and the public.

I should veto any act which, like the Wisconsin law, seems, as shown in the Stephenson senatorial investigation, to handicap ability and conviction and to put the ambitious rich man and the ambitious poor man on an unequal basis. The limitation of the amount of campaign expenditures, however, is not so important as the precise definition, in a corrupt practises act, of the purposes for which money can and cannot be expended ;

and in conjunction with that, a periodic published statement of contributions and expenses.

As governor I should feel it my duty to veto any act which would facilitate vote-trading between the parties, as under some western laws, under which men may connive at weak and unfit nominations in order to bring about the election of others in the service of some special interest, or may conspire in defeating the nomination of a strong man and in favor of a weak man who could be more easily beaten at the polls. These I regard as the great defects in most of the primary acts either proposed or now upon the statute books.

As governor, I should urge the immediate repeal of the Levy election law. It is inequitable, burdensome to taxpayers and obviously intended to defeat that free and independent expression of the popular will which is the clear and unmistakable intent of both state and national constitutions. In place of the Levy law I should urge the enactment of a statute which would, in the first place, prevent illegal voting so far as it is possible so to do, and in the second place, give facility under proper limitations to independent voting. I should conceive it my duty as governor to stimulate public interest in the primary and general elections, and to safeguard both through effective statutes. The most important end to attain, to my mind, is the formulation and enactment of a corrupt practises act which shall make no discrimination between primary and general elections, but which, on the contrary, shall amply safeguard both, through the following means, (which I advocated in an address in June) and which were evolved out of my experience as deputy attorney general in prosecution of election frauds in New York city:

There should and could be, as a matter of law, provision made whereby the burden of proof of illegal voting either at primary or election day should be shifted so that in prosecuting offenders prosecuting officers or complaining citizens might not be compelled to bear the entire burden of proof and establish beyond all question of doubt that a man is not entitled to vote. Of course, in criminal procedure the burden of proof is on the prosecutor, and the man charged with crime is entitled to the benefit of the doubt and the presumption of innocence.

This rule cannot be abrogated in the prosecution of political criminals more than of others. But in getting back to first principles, you can lay the burden of demonstrating a right to vote upon the enrolled or registered voter so that he must establish by his own affidavit and proof if necessary, so affirmatively and clearly his legal right to vote that when the prosecution comes it is made easier for those who are seeking to use the law to protect the suffrage to secure conviction.

No man can consistently object to meeting such requirements and proving his right to vote at the primary or general election, when not to do so gives opportunity to the evil-minded either to vote when having no right so to do, or to vote more than once. To do either of the latter is to rob some one of his right of franchise. To rob another of the right of franchise destroys the most sacred right of citizenship, prevents majority rule and is the most dastardly crime against republican institutions. Let me say here that the constitutional institution of the short ballot is to my mind the fundamental prerequisite to the institution of a just and comprehensive direct primary statute.

With relation to the operation of a direct primaries act let me say that the handicap must in any primary or general election rest upon the unorganized sentiment. Order and organization are the first laws of the universe. Organization is the first law of society. The army is effective only to the degree in which its individuals act as a unit, and only up to the point where individuality and individual initiative are absorbed in the personality and initiative of a single individual or a number of individuals. So it must be with partisan political organizations.

To my mind a machine is generically an organization that has become enervated through inbreeding, resulting in crass selfishness and despotism. As a drilling organization a machine, up to a certain fixed point, is a delight to the mind; as a potential fighting organization a machine becomes impotent the moment its members lose their individuality and spirit of initiative.

You cannot legislate into the heart of any citizen a sense of civic duty. We have not as yet brought ourselves to the point where we believe it necessary to compel the citizen to participate in those activities which pertain directly to him and to his

own personal welfare and that of his neighbors. It is not possible with any kind of direct primary, I do not care what its terms and provisions may be, to compel the people to recognize and understand the fact that the primary is the very source and wellspring of good or bad citizenship and that, therefore, they are worthy of citizenship only to the extent to which they individually actively participate in the choosing of their candidates and nominees. No primary act has yet been devised, and maybe one cannot be in our day, that will bring to the polls on primary day the same number of men who vote on the day of general election, for the reason that all the voters have not yet accepted understandingly the fact that the primary is fully as important as the general election, if not even more important.

What a practicable, fair and proper direct primary law can do when such a law is formulated and placed on the statute books is to afford to the people at a time of emergency an instrumentality through which they can directly and easily apply a remedy for mismanagement and malfeasance. Therefore it is not to be wondered at and should not have been regarded as indicative of inherent weakness that the presidential primaries were participated in by a much smaller number of persons than ordinarily vote at a presidential election. It will be only when the voting public regards its civic duty in proper perspective that the primaries will reach, so far as the number of votes cast is concerned, the importance of a general election.

I believe in the simplest and most direct means of public expression. I do not believe that a primary or election law should make of a ballot a preposterous puzzle. It should be so simple that the most ingenuous and simple mind could use it understandingly. I do not believe intended obstacles should stand in the way of independent voting. On the contrary, a law which practically inhibits fusing or independent voting is a two-edged sword. Always it happens that a fusing or independent movement helps one party or another, one individual or another, one faction or another. As a Republican partisan I am, as I have said, absolutely and unqualifiedly in favor of a primary law and an election law which will permit ease in independent voting.

This is, I repeat, not only a recognition of the inalienable rights of citizenship, but also, to my mind, the very best policy and politics. There is no doubt that independent movements are more often directed against individuals than against parties, and that they are properly inimical to any rule-or-ruin policy of leadership. This is absolutely as it should be, for no leadership is worthy of respect that will not consider the rights of others and the rules of fair play. To my mind leadership springs from the heart and has its roots in human understanding and responds to public needs with human sympathy. A man who regards leadership as a proposition in absolutism, as a game and not as a duty, as a selfish interest and not as a human obligation, is unworthy of a place at the head of any party or of any organization, and the law should make it easy for the party voters to oppose and depose unworthy men who ill-use the powers, prerogatives and privileges of leadership.

OSCAR S. STRAUS, candidate of the National Progressive party for governor of New York:

The question of primary reform is no new one to me. In New York in 1898 the first National Primary League was formed and held its meetings in the rooms of the board of trade and transportation. I had the honor of presiding over this convention during the three days of its sessions. At that time I advocated such reforms in nominating methods as would place the control of the nominating process more completely in the hands of the voters of each party.

For the last three years of his term, Governor Hughes devoted more time and energy to primary reform than to any other problem. Against the bitter opposition of both the Republican and the Democratic organization he advocated a thorough-going, state-wide system of direct primaries. Up to the present time, however, his efforts have been to all intents and purposes without tangible results. All the political parties are now at least nominally committed to the principle of the direct primary—and *general* arguments in favor of this system as against the convention system are therefore superfluous—but we are still without any* real or honest embodiment of this

principle in the form of law. The so-called direct primary law of 1911, enacted by a Democratic legislature with the help of the Republican machine, is an absolute negation of all that Governor Hughes fought for, a denial of the very foundation principle of the direct primary. Instead of giving to the rank and file of the party voters an effective control over the nominating process, it merely rivets more firmly than ever the grip of the machine, and gives to what was formerly an unrecognized and unofficial machine dictation the sanction of legal recognition. It does this: first, by conferring upon party committees—chosen, not as under the Hughes plan, but by a process which makes them virtually self-perpetuating—the power to designate or propose candidates for nomination to public office; second, by making it exceedingly difficult for anyone else in the party to propose alternative candidates; third, by providing for an official primary ballot—the like of which has never been seen before under the primary law of any other state—of such a form that none but the candidates proposed by party committees stand any real chance of being nominated; and, fourth, by omitting from the application of the law the very offices in which the voters are most interested, and thus discouraging them from attending the primaries.

As if not content with their handiwork, and desirous of an even more cast-iron control over nominations, the Republican and Democratic machines combined at the session of 1912 to pass an amendment to this law permitting the party organizations to make the assembly district, instead of the election district, the unit of representation in the choice of party committees. This permission was promptly taken advantage of by both organizations, with the result that the party voter in New York city at the primaries last March instead of being called upon to elect from one to eight members of the county committee of his party was asked to choose from seventy-five to four hundred members. The result as to other committees and in other parts of the state was almost equally absurd. The primary ballots were from six to fourteen feet in length; it was practically impossible for any independent element in either party to run a rival ticket for party offices against that proposed

by the "organization;" and the whole operation of this sham direct primary system was rendered ridiculous.

So much for the type of primary law favored by the two old parties. Both of them promise amendments at the coming session, but the kind of amendment which we may expect from either of them is well indicated by the amendment which they passed last year.

Without going into details, *it is most important to apply the direct primary law to all public offices and party positions*, including United States senators and delegates to national party conventions, and excluding only such minor local offices as were excluded under the Hinman-Green bill. To such an extension both the old parties are definitely opposed—but if the direct primary system is sound and desirable as applied to all other offices, why should it not be applied to the most important offices of all, the very offices in which the voters are most interested and in regard to which they have the clearest and strongest preferences? The opponents of such an extension will reply that it is sufficient that the party voters should have power to "instruct" the delegates to the state convention as to their preference for state officers. Even assuming, however, that such instructions, when clear and unanimous, will be carried out by the convention—an assumption by no means certain to be justified,—it is wholly unfair to the voters to expect them, with no more information or assistance than is supplied them under the convention system, even to *have* any clear preference as to party candidates, to say nothing of taking the trouble to go to the polls and express it when they have no assurance that such an expression of their opinion will produce any result. Up to the time the primaries are held there has been, under the present system, no adequate public discussion of the merits of the various candidates for nomination. The candidates have not come forward and conducted a campaign to acquaint the voters with their personalities or their views. Their names do not appear on the official primary ballot which is handed to the voter at the polling-place. All that he has before him is a list of names of eminently respectable and otherwise colorless gentlemen who are seeking election as delegates

to the state convention, and who have been carefully picked out beforehand by the leaders of the "organization" as persons who can be relied upon to do what they are told. There is nothing to indicate whom these gentlemen favor as party candidates for the various state offices—indeed, they often have very little idea themselves. The ballot seldom contains the names of any opposing list of candidates for the positions of delegates—chiefly for the reason that there is at this time no issue on which any fight against the organization candidates can be made except that of their personalities or the general issue of opposition to the "organization," which as yet has not shown its hand. The voters, in short, are merely asked to give a blind power of attorney to the "organization," which, later on, will announce through its mouthpiece, the convention, whom it has selected. Under this system the task of the voters, at best, is to suggest. It remains for the "organization" to decide. I believe, on the contrary, in a system under which the "organization" will suggest and the party voters finally decide. Let the "organization" be given the right, together with any other groups within the party, to propose candidates for nomination. Let these candidates go before the party voters and present their claims to the nomination, so that the party voters, when they go to the primaries, may decide between them as intelligently and with as complete information as to their merits as possible. But let the party voters themselves have the last word.

I believe all the more strongly in applying the direct primary principle to state offices because the statistics from other states show that where this is done the popular vote at the primaries is larger than in those states where only local officers are directly nominated. Since the chief purpose of the direct primary is to secure as full and representative an expression of opinion as possible within each party, every factor which serves to increase the popular vote at the primaries should be taken advantage of to the fullest extent.

Another reason why I favor the extension of our direct primary law to state offices is that, in other states, wherever the direct primary system has been adopted for certain local elections, its application has almost always been subsequently ex-

tended, and in twenty-eight states direct nominations are now mandatory for practically all elective offices. In six other southern states the system is optional, but under the rules of the Democratic party, practically all elective officers are nominated at legally regulated direct primaries. In only four states outside of New York is the application of the system still limited to local offices. Surely the experience of the rest of the country has something to teach us on this point.

But our direct primary law should not merely be extended to apply to the state offices in its present form. It should also be amended so as to provide for an official primary ballot of the office-group type, such as is now in use in every other state which has adopted the direct primary system. Our present form of primary ballot, with its separate column for each faction, its permission to the organization within the party to use the emblem of the party as a whole to designate its own candidates for nomination, its provision that the name of a candidate for nomination may appear in only one column, and its special provision for straight ticket voting, is cunningly devised to give the organization an impregnable position and absolutely prevent all independent action within the party. We should adopt a form of ballot on which all candidates for nomination are placed upon an absolute equality.

Another most urgently needed amendment to our present law is one providing for a reduction in the number of signatures required to place a candidate's name on the official primary ballot by petition. At present such petitions must be signed by at least five per cent of the enrolled party voters in the district and four per cent of the total party vote for governor in the district at the last preceding gubernatorial election. This requirement often renders the proposal of candidates for nomination by any group within the party other than the organization practically impossible. It should be altered for the same reasons which demand a change in the form of the primary ballot.

In order, furthermore, to prevent any repetition of the absurdly long ballots used at the primaries last spring, and to put into force within the party the same short ballot principle

which we are advocating for public offices, the use of the election district, instead of the assembly district, as the unit of representation in the choice of party committees should be made mandatory. The same principle demands that only the most important party committees be made elective by the party voters. These amendments would remedy the worst defects in the existing law.

In conclusion I wish to call attention to the fact that the direct primary is not the only method which, in full accordance with the Progressive platform, I am earnestly advocating for the purpose of giving to the people a more complete control over their government. The adoption of the short ballot system for public offices is particularly important as a corollary to the direct primary, since without it the task of the voter in making nominations will be left unnecessarily complicated, and his control over the nominating process correspondingly impaired. This does not mean that we should postpone the enactment of a thorough-going direct primary law until after we have amended the constitution to provide for the short ballot, but it does mean that we should supplement our direct primary law by a shortening of the ballot as soon as possible.

WM. SULZER, candidate of the Democratic party for governor of New York: I am in favor of simplifying the ballot, extending the corrupt practises act, and instituting direct primaries. I have been advocating these reforms ever since I was in the legislature twenty years ago. In coöperation with the late Senator Saxton, I passed the first ballot reform law and the first corrupt practises act when we were in the legislature, and from that day to this I have been doing everything in my power to promote these salutary reforms. In the future, as in the past, the people of New York can rely on me to take no step backward.

PROCEEDINGS OF THE AUTUMN MEETING OF THE
ACADEMY OF POLITICAL SCIENCE HELD IN
NEW YORK, OCTOBER 25 AND 26, 1912

THE autumn meeting of the Academy of Political Science held in New York on October 25 and 26, 1912, dealt with Efficient Government. Three sessions were held at Earl Hall, Columbia University. The program was as follows:

FIRST SESSION

Friday afternoon, October 25

Topic

THE SELECTION AND REMOVAL OF JUDGES

Introductory address

Harlan F. Stone

The Elective and Appointive Methods of Selection of Judges

Learned Hand

The Recall of Judges

Gilbert E. Roe

J. Hampden Dougherty

Discussion by Richard S. Childs, Everett P. Wheeler,
Charles H. Hartshorne and Edward D. Page

THIRD SESSION

Saturday morning, October 26

Topic

THE ADAPTATION OF WRITTEN CONSTITUTIONS TO CHANG-
ING SOCIAL CONDITIONS

Introductory address

Munroe Smith

Judicial Interpretation of Constitutional Provisions

Frank J. Goodnow

The Amendment of the Federal Constitution

J. David Thompson

The Reorganization of State Government

Henry Jones Ford

The Recall of Judicial Decisions

William Draper Lewis

Clarence D. Ashley

Discussion by Henry R. Seager

FOURTH SESSION

Saturday afternoon, October 26

Topic

LEGISLATION AND ADMINISTRATION

Initiative and Referendum

Paul S. Reinsch

The Federal Budget

Frederick A. Cleveland

Efficient Organization of the Personnel in Administration

W. F. Willoughby

Legislative Drafting

Thomas I. Parkinson

Harlan F. Stone, Dean of the Law School of Columbia University, presided at the first session, and Munroe Smith, Professor of Roman law and comparative jurisprudence in Columbia University, presided at the third and fourth sessions.

CONFERENCE DINNER

The second session was the regular conference dinner held at the Hotel Astor on Friday evening, October 25, President Samuel McCune Lindsay presiding.

The general topic for discussion was "The Direct Primary versus the Convention Method of Choosing Candidates for Public Office."

Addresses were made by Albert Bushnell Hart, Professor of

Government in Harvard University and by the Hon. Edgar T. Brackett, of the New York state senate.

Statements on direct primaries by the three leading candidates for governor of New York, Messrs. Hedges, Straus and Sulzer, were read. Mr. Hedges was represented by Mr. John A. Stewart, State Chairman of the Republican Party; Mr. Straus by Mr. William H. Hotchkiss, State Chairman of the National Progressive Party; and Mr. Sulzer by Col. Alexander S. Bacon.

The papers read at the sessions, the discussions, and the addresses and statements at the dinner are printed elsewhere in this volume.

PROCEEDINGS OF THE MEETING OF THE BOARD OF
TRUSTEES IN CONFERRING HONORARY MEM-
BERSHIP UPON THE RIGHT HONORABLE
JAMES BRYCE

0. Amel.
AT a meeting held on January 8, 1913, the Board of Trustees of the Academy of Political Science, acting in accordance with the powers conferred by article IV of the constitution, created a class of honorary members and elected the Honorable James Bryce, British Ambassador to the United States, as the first honorary member.

A special meeting of the Board of Trustees of the Academy was held in the trustees' room of Columbia University on Friday, February 24, at four o'clock. To this meeting the life members of the Academy and a few special guests were invited. Upon the arrival of Mr. and Mrs. Bryce, Professor Samuel McCune Lindsay, President of the Academy, called the meeting to order and explained its purpose. In behalf of the trustees, President Nicholas Murray Butler, a member of the advisory council of the Academy, presented to Mr. Bryce a certificate of membership, handsomely engrossed and bound in leather covers. President Butler referred to Mr. Bryce's distinguished public services and his notable contributions to political science, expressing the hope that he might employ the leisure following his retirement in formulating an interpretation of the whole modern democratic movement.

Mr. Bryce responded in a happy speech, expressing his interest in the Academy, his pleasure in becoming its first honorary member and his belief in the importance of the work of such institutions in America. In closing he referred to the possible services of the United States in forwarding the cause of arbitration and world peace.

Following this meeting the Academy tendered a reception to Mr. and Mrs. Bryce in Earl Hall. All the members and many guests were invited and several hundred persons attended.

INTRODUCTORY REMARKS OF PROFESSOR SAMUEL McCUNE
LINDSAY, PRESIDENT OF THE ACADEMY OF POLITICAL
SCIENCE

This special meeting of the Board of Trustees of the Academy of Political Science has been called at a time when Mr. Bryce could be with us, for the purpose of giving added emphasis to the action already taken by the Board at its meeting on January 8, when Mr. Bryce was elected the first honorary member of the Academy.

Over thirty-two years ago this Academy was organized by a small group of men inspired by the greatest scholar and teacher in the field of political science that America has produced, our own Dean Burgess, who was then just beginning the great work he has now laid down here at Columbia, and in the fruits of whose labor most of us here to-day have peculiar reason to rejoice. For many years the Academy restricted its efforts to building up high standards of scientific work and to encouraging productive scholarship in political science.

An organization with such an aim was much needed at that time and the influence of the Academy was potent in the somewhat narrow circle of the teaching profession and of the few specialists, chiefly lawyers, who gave some scientific consideration to the problems of government.

With the passing of the years have come new problems in our public life. The relations of citizens to government have changed and educational institutions must undertake a new work in preparing citizens for ideal participation in democratic government. The Academy has proved sufficiently elastic in its organization to respond to these new needs, and within the last five years it has undergone almost a complete change in its activities. It aspires to be a real educational force in our American democracy, bringing the studies of the specialist and the highly educated professional man to the average man and the average woman who must needs participate in government and upon whose intelligence and efficiency the possibilities of

government depend. It aims to popularize the growing literature of political science, without loss of scientific value, to stimulate active discussion of the facts, conditions and problems of government as it affects the ordinary man.

In this work the Academy has enlisted the coöperation of over two thousand of our fellow-citizens. Its membership is open to men and women alike who are willing to share in its work. The *Political Science Quarterly* holds a foremost place in the scientific world, and as the organ of the Academy, so ably edited by the faculty of political science of this university, brings us into close affiliation with the scientific life of the university. The Academy does not propose as it grows in numbers and resources to weaken the influence of such publications as the *Political Science Quarterly*, but if possible to extend and strengthen such influence through the addition of other publications like our *Proceedings*, and, possibly, a still more popular periodical yet to be issued, adapted to the needs of a wider circle of intelligent men and women anxious to know more about government and to do their part to aid in the establishment of rational and sound public opinion.

In this work and in the creation of the ideals which it presupposes, we are already indebted to Mr. Bryce as to no other writer in the English-speaking world. No one has done more than he to give us a clear vision of the possibilities of democracy; no one has voiced more clearly the challenge of democracy to the forces of education. We shall miss him all the more when he leaves our shores, because he has been so vitally identified with the deeper currents of American life and American thought. In his home land or wherever he may be, however, we shall not lose him so long as he has voice or pen to contribute to the thought of his time and to the wisdom of all ages. We shall now count upon him, as our first honorary member, for counsel and guidance, and we shall ever look to him as an example of the ideal citizen who serves.

I now have the honor, by authority of this Board, to ask President Butler, a member of the advisory council of the Academy, to present to Mr. Bryce a certificate of honorary membership.

REMARKS OF NICHOLAS MURRAY BUTLER, PRESIDENT OF
COLUMBIA UNIVERSITY, IN PRESENTING CERTIFICATE OF
HONORARY MEMBERSHIP IN THE ACADEMY OF POLITICAL
SCIENCE TO AMBASSADOR BRYCE

Mr. Chairman, Mr. Bryce:

My colleagues have given me the grateful privilege of transmitting to you, sir, this formal certificate to mark the honorary relation in which they are glad to know that you are hereafter to stand to this Academy.

In handing you this document, I find it difficult to withhold one or two personal words. My mind goes back, sir, nearly thirty years to the beginnings of a strong friendship and of that sort of admiration which a younger man is sometimes fortunately permitted to have for his elder, when in your library, first in Bryanston Square and afterwards in Portland Place, we used to spend delightful mornings in discussing public affairs, the movement of public opinion, and the literature of political science and of philosophy. It was then and there that, through your courtesy and kindly hospitality, I had the opportunity and the high privilege of meeting and of coming to know so many of the men who were at that time leading the opinion of the British people and formulating the issues of British politics.

At that time, sir, as you will easily recall, the first bills for the government of Ireland were being drafted and presented for formal consideration. It has taken all the intervening years for the political movements and the political tendencies in which we were then so keenly interested to move forward to the accomplishment of the result which, by the recent vote of the House of Commons, seems now to be substantially assured.

To this personal word, let me add something more. You have stood in a peculiar relation to those of us who are students of public affairs, and especially to those of us who have had some part in the shaping of international opinion and in the conduct of international relations. One of our colleagues at this university, who has the happy and inveterate habit of mix-

ing wit with his wisdom, has said that it was given to you to invent the Holy Roman Empire and to discover the American Commonwealth. We are glad that you have given us the two well-known books on these subjects. But you have done much more than that. Somewhere in your writings—I think it was in your biographical essay on your friend, Lord Acton—you have made a statement which has seemed to me to be very true of yourself, namely, that in estimating the great things of history Lord Acton had not overlooked the significance of the smaller things and so had not lost his sense of proportion in dealing with matters of history and politics.

Let me say, too, with what pleasure some of us have been reading your newest and very illuminating book on South America. One characteristic of that book, in particular, has impressed me, and that is that out of the wealth of your personal knowledge and out of your wide travel in each of the continents of the world you have gained material for comparative and instructive judgments as to mountain ranges, plains, products of the soil, lines and routes of travel—judgments that have made your account of what you have seen in these South American republics by far the most helpful that has yet been written by anyone. In that book not only have you given us a record of what you saw there, but you have given us that record in terms of what you had already so widely seen elsewhere.

Greatly to the regret not only of our government but of our whole people, you are now about to retire from the great post that has been distinguished by your occupancy. We can let you go, sir, only on the condition that you will devote the years that are to come to illuminating for us some of the dark places that still remain in the public life and thought of the world. We greatly hope that out of your visits to South Africa, to Australia, to Canada, to Latin America, and out of your wide and minute knowledge of the United States, there may yet come a critical study and interpretation of the whole modern democratic movement. We need this study and interpretation of democracy, not only from the point of view of political

institutions, but from that of its personal, its social, and its economic results, together with its effect upon individual human beings and upon the life and progress of humanity as a whole.

You go from us to assume a new honor. You are to be one of the panel of judges representing Great Britain from which is constituted on occasion the great supreme international court of arbitral justice at The Hague, a court which you have labored to establish and in the principles underlying which you profoundly believe. It is grateful to think that the court is to be the forerunner of a number of influential international institutions that shall help bind the nations of the earth together in unity and concord, and to free both men and nations from the crushing burdens of armaments and from the fears and terrors out of which they grow.

And so, sir, in handing you this certificate of membership, I do so on behalf of this company of friends, friends who have become such through knowledge of your personality, through the sympathetic and attentive following of your public career. When you go back to Great Britain to take up the duties that await you there, you carry with you the full weight of the affection and regard of the American people, and of none more than those who are assembled in this room, who have formed the habit of looking up to you as a guide and philosopher, and as a true and well-tried friend.

REPLY OF AMBASSADOR BRYCE

Mr. President, Professor Lindsay and Gentlemen:

I can hardly find words to express my sense of the honor you have done me and of the gratification given me, both by the honorary membership in your Academy which has been conferred upon me, and also by the terms in which that has been conveyed to me by my old and valued friend, the president of your university, and by Professor Lindsay.

It would be superfluous for me to attempt to say—because I know that you must feel yourselves—how large a part friendship has had in dictating the words which President Butler has

let fall; it would be superfluous for me to say that the words he has used express an estimate of my aspirations rather than of my achievements. Nevertheless I am cheered by his words and by your kindness to believe that some good may have been done and I am encouraged to use whatever of life and strength may remain to me in the persevering endeavor to elucidate some of these complex phenomena of government whose comprehension will enable us in some measure to understand other countries in their reality, and to appreciate the character of their people.

I do not think that any greater service can be conferred upon the world by learned men who are trying to find solutions for all the problems that press upon us than by the creation of bodies such as this Academy, bodies which devote themselves to a scientific investigation of government, economics, administration, and what is called social science in general. You here are confronted by a number of problems probably more difficult and intricate than any other country has ever had to face. In some ways they are more complex than in Europe; yet in many respects they are not so dangerous, and often they are easier to face than the problems of European countries. No greater service can be rendered toward the solution of these problems than by the cultivation of patient and impartial thought. Thought governs the world; seeming to be ruled by votes, the world is actually ruled by thought. All the great movements of the world have begun from the thought of a comparatively small number of geniuses marking out the lines; they were followed by others who devoted their lives to developing the ideas and examining the facts to which the principles ought to be applied.

The need was never greater than now. Just because we are apt to be carried away by popular passion, it is the more necessary that all these things should be investigated by such a body as your Academy in the spirit that I have sought to indicate. It is not merely the political problems, urgent though they be, to which I refer. I speak also of economic problems, which are becoming increasingly important with the immense increase

of wealth, the development of communication and transportation, and the growth of those closer relations which now exist between all parts of the world. I have likewise in mind what we call social questions. There is a surprising growth of active philanthropy. There is a stronger feeling than ever before of the responsibility of the rich for the poor and of the necessity of applying our ethical and religious principles to bettering the lot of those who most need it. The difficulty is to know how to do it. The difficulty is to know how you can help others without superseding the help which they ought to give themselves. In all that immense field there is need for the closest study of social schemes and theories and of the methods of social reform that ought to be adopted. I believe that your Academy will be just as useful in grappling with these social problems as it will in dealing with political questions.

I should like, in saying that, to express the recognition of our English students of the value of your journal, the *Political Science Quarterly*, which is so ably edited by the university faculty of political science. We have nothing like it in our own country, and I am not sure that a similar publication would secure the number of readers necessary for its support. I have read it assiduously since its foundation and I have never opened it without being enlightened, and I sincerely hope that under the auspices of the Academy it will continue to flourish and render service to you and to us as it has done heretofore.

I will only add further, Mr. President, that I am deeply touched not only by your references to our old friendship but by what you say with regard to whatever work I may still hope to do. I have planned to write something, not of so large a scope, and I am afraid not venturing to attempt such heights, as you have indicated, but still something of the kind to which your words pointed. I am much encouraged by your words and by those of my other friends to go on and to devote to the task whatever time and strength my small powers will permit.

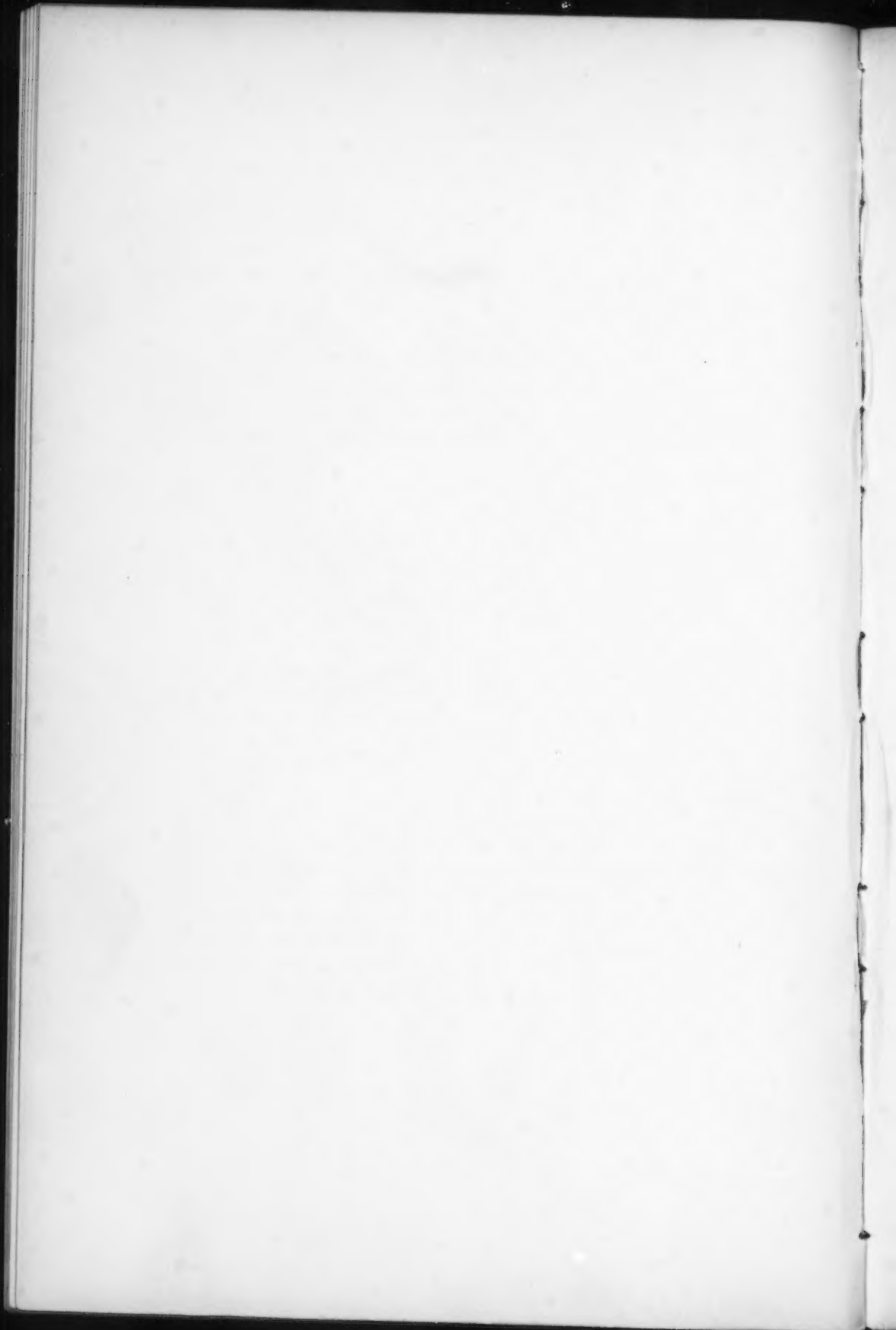
Let me say further that when I return home there will be nothing which I shall prize more highly than the opportunity to help to make known to the English people the true feelings of

the American people. I shall assure them, as I know I confidently can, of the friendship of this country and of the strong desire which exists—and which is the desire of my own people as well—that the United States and Great Britain should walk hand in hand and should together hold aloft that torch of liberty that our common ancestors lighted so many centuries ago.

I may say that since I have been here I have come to realize more and more what is the pacific and honorable attitude of your people. I am more than ever convinced that the cause of arbitration and world peace will prosper pretty much in proportion as it has the loyal adherence of the United States government and people.

May I say further, as it has been my privilege in time past in England—and here I speak for my wife as well as for myself—as it has been our joy and delight frequently to see our American friends when they come over and to do what we could to help them, so it will be a continual privilege to us to meet you and your friends and to do what we can for you, whether by putting you in touch with our people or by supplying information to your Academy with regard to what is going on in Britain.

It is a great privilege to be able to feel oneself, if not technically at least practically, a citizen of two such countries. You have made me a citizen of your country and I shall never forget that privilege. Whatever I can do to aid you and yours, that I shall do in unforgetting remembrance of your kindness.



INTRODUCTION

THE laws of Continental United States, that is of the forty-eight states and the District of Columbia but excluding Alaska, Hawaii, Porto Rico and the Philippines, regulating the treatment of prisoners during confinement, under the caption "The Caged Man", have been gathered together and classified so as to bring vividly to the mind of the student the answer to the question "What means a prison sentence". The collection of this material has been an arduous task because the statutes affecting prisoners are to be found under the most diverse headings and as parts of the law on many subjects. The constitutions, the latest revised statutes and the session laws down to January 1st, 1913, have been carefully read and classified. The segregation of this material taken from its context and the classification of many hundreds of references, under an arbitrary classification, has required a knowledge of the actual administration of the law in the several states, and the ascertaining, as far as possible, the probable meaning of the confused and varied expression of the thought contained in many poorly-drawn and ill-conceived statutes, hidden away in legislation often foreign to the actual subject under consideration and conflicting in many details with other statutes. The administrative character of this legislation has led to the interpretation of these conflicts by administrative boards and the changing personnel of the Attorney General's office, rather than by adjudication in courts of record. This study therefore must be considered in the light of these limitations and as having been presented more as an exhibit of the vagaries of legislative caprice, than as suggesting either the actual practice existing under the prison administrations in the several states, or as an ideal upon which to model new and better legislation. It suggests the repeal of many worn-out, antiquated and unused statutes; it makes possible the laying down of the principle that legislation should deal with broad principles and leave administrative detail to the duly constituted body which has been created for administration; and it brings to light many isolated provis-

ions which would be valuable in the working out of a more perfect and better conceived penal statute law than is now found on the statute books of any state. References are given in full in the hope that students of the subject will be able to use the material in their work of drafting legislation, and in the hope that through such working over there may come to light and to our attention those errors which must necessarily have crept in because of the inherent difficulty of compilation and the variation resulting from the use of personal judgment in classification. Such suggestions, which will be gratefully received, should be sent to Miss Julia Jaffray, Secretary, Educational Department, National Committee on Prison Labor, 319 University Hall, Columbia University, New York City. Miss Jaffray has compiled the statutes to which reference is made in this monograph.

E. STAGG WHITIN.

NEW YORK CITY, APRIL, 1913.

(254)

THE CAGED MAN

HUMANE treatment of prisoners finds expression not alone in the limitations placed upon keepers but in the development of those incentives for a better life which play upon the dormant emotions and depleted energies of prisoners and vitalize them into normal being. Cruelty lies equally in the failure to provide these opportunities for reform as in the over-development of prohibitory measures. The surgical instruments of a century ago seem both cruel and crude to those familiar with modern surgery. Many of the instruments of penal administration herein referred to will seem as archaic to those who view them from the standpoint of modern psychology and ask the pertinent question what a prison sentence means today to society as well as to the "caged man".

I.

WHAT IS THE STATUS OF A PRISONER?

The state has a property right in the labor of the prisoner. The Thirteenth Amendment of the Constitution of the United States provides that neither slavery nor involuntary servitude shall exist, yet by inference allows its continuance as punishment for crime, after due process of law. Similar provisions are found in the constitutions of most states.¹ The absolute prohibition of slavery without exception in Maryland, Rhode Island and Vermont abrogates the status of penal servitude but continues, under police power, the penal system for the protection of the community and for the protection of the wayward individual, his status being analogous to that of the insane, defective and otherwise incompetent wards of the state.

The Property of the State.

"Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state."

California, Const. 1879, Art. 1, Sec. 18.

The Ward of the State.

"Slavery shall not be permitted in this state."

Rhode Island, Const. 1842, Art. 1, Sec. 4.

¹ American and English Encyclopedia of Law, 1898, vol. 22, p. 1302.

The Property of the State in:

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| ALABAMA | Const. 1901, Sec. 32. |
| ARKANSAS | Const. 1874, Art. 2, Sec. 27. |
| CALIFORNIA | Const. 1879, Art. 1, Sec. 18. |
| COLORADO | Const. 1876, Art. 2, Sec. 26. |
| FLORIDA | Const. 1885, D. of R., Sec. 19. |
| GEORGIA | Const. 1877, Art. 1, Par. 17. |
| INDIANA | Const. 1851, Art. 1, Sec. 37. |
| IOWA | Const. 1857, Art. 1, Sec. 23. |
| KANSAS | Const. 1859, B. of R., Sec. 6. |
| KENTUCKY | Const. 1890, B. of R., Sec. 25. |
| MICHIGAN | Const. 1850, Art. 18, Sec. 11. |
| MINNESOTA | Const. 1857, B. of R., Art. 1, Sec. 2. |
| MISSISSIPPI | Const. 1890, Art. 3, Sec. 15. |
| MISSOURI | Const. 1875, Art. 2, Sec. 31. |
| MONTANA | Const. 1889, Art. 3, Sec. 28. |
| NEBRASKA | Const. 1875, Art. 1, Sec. 2. |
| NEVADA | Const. 1909, Art. 1, Sec. 2. |
| NORTH CAROLINA | Const. 1876, Art. 1, Sec. 33. |
| NORTH DAKOTA | Const. 1889, Art. 1, Sec. 17. |
| OHIO | Const. 1851, Art. 1, Sec. 6. |
| OREGON | Const. 1857, Art. 1, Sec. 35. |
| TENNESSEE | Const. 1870, Art. 1, Sec. 33. |
| UTAH | Const. 1895, Sec. 21. |
| WISCONSIN | Const. 1848, Art. 1, Sec. 2. |

The Ward of the State in:

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| MARYLAND | Const. 1867, D. of R., Art. 24. |
| RHODE ISLAND | Const. 1842, Art. 1, Sec. 4. |
| VERMONT | Const. 1793, C. 1, Sec. 1. |

II.

WHY IS HE CONFINED?

Three classes of convicts ¹ are found in our penal institutions:

- A. Prisoners working off fines and costs.
- B. Prisoners serving sentences, either fixed or indeterminate.
- C. Prisoners awaiting capital punishment.

A. *Prisoners working off fines and costs.*

Persons convicted of minor offences are often sentenced to pay fines, the cost of conviction being assessed along with the fine. Fines may be paid out of the convicted man's personal possessions or by a "next of friend" to whom he becomes a debtor under agreement to refund in kind or labor. Failure to pay the fine results in commitment to penal servitude for such a time as it may take to pay off the full amount due at the rate established by statute. Credits toward the satisfaction or payment of fines and costs are allowed as follows:

1. *\$100.00 per year during confinement.*

CONNECTICUT

(State prison.)

Every prisoner held in said prison for non-payment of a fine shall be allowed one hundred dollars a year for his labor, from the time when his imprisonment for non-payment of said fine commenced, if, in the opinion of the warden and directors, he shall have been submissive to the officers of the prison during his confinement and conducted himself as a faithful prisoner.

R. S. 1902, Sec.
2914.

2. *\$3.00 for each day's confinement.*

NEBRASKA

Whenever district court or probate judge shall have determined that a person, confined in jail for any criminal offence, has no estate with which to pay fine and costs, it shall be the duty of said judge to discharge such person from further imprisonment for such fine and costs. Discharge to operate as complete release from such fine and

R. S. 1911, C. 49,
Sec. 2692.

¹ This study covers only convicted prisoners, hence persons awaiting trial or held as witnesses are not included though frequently found especially in local jails.

costs, provided nothing shall authorize any person to be discharged from prison before the expiration of the time for which he or she is sentenced to imprisonment, nor until convict shall have been imprisoned at least one day for every \$3 of the amount adjudged against him.

TEXAS

When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he makes oath in writing that he is unable to pay the fine and costs, he may be hired out to manual labor, or be put to work in a manual labor work-house, or on a farm or public work of the county. If there be no such work-house, farm, etc., and the authorities fail to hire him out, he shall be imprisoned in the county jail for a sufficient length of time to discharge the full amount of fine and costs, rating such punishment at three dollars for each day thereof.

R. S. 1911, Crim. Stat., Title 9, C. 4, Art. 878.

WASHINGTON

Any person ordered into custody until the fine and costs adjudged against him are paid, who within five days shall not pay or cause payment of same, shall be imprisoned in the county jail until the fine and costs are paid, or until he has been imprisoned in jail 1 day for every three dollars of such fine.

R. S. 1910, Title 3, C. 19, Sec. 2206.

3. \$2.00 for each day's confinement.

CALIFORNIA

A judgment that a defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, but the judgment shall specify the extent of the imprisonment, which shall not exceed 1 day for every \$2.00 of the fine, nor extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense for which he has been convicted.

Penal Code, 1909, Title 8, Sec. 1205.

IDAHO

Whenever any person under conviction for any criminal offense is confined in any jail for non-payment of fine, the district Court, upon satisfactory evidence of such inability, may, in lieu thereof, confine such person in the county jail at the rate of \$2.00 per day until the fine imposed is satisfied.

R. S. 1908, Sec. 8545.

MONTANA

When judgment of fine and costs is entered against a defendant and it is ordered that he be committed until the same are paid, if at any time thereafter defendant prove to court that he is unable to pay such fines, costs, or any part thereof, the Court or judge

R. S. 1907, Title 9, C. 1, Sec. 9373.

may order the sheriff to release him upon his having been confined in jail 1 day for every \$2.00 of such fine and costs, or any portion remaining unpaid; but if he do not prove to satisfaction of court that he is unable to pay he shall not be released, unless the sheriff has made the same upon execution out of his property.

NEVADA

Whenever any person, under conviction for any criminal offense, shall be confined in jail for any inability to pay any fine, forfeiture or costs, or to procure sureties, the district court, upon satisfactory evidence of such inability may, in lieu thereof, confine the person in the county jail at the rate of \$2.00 per day until the fine, forfeiture or costs so imposed shall have been satisfied.

R. S. 1912, Sec. 7611.

OREGON

A judgment that a defendant pay a fine must also direct that he be imprisoned in the county jail until the fine be satisfied, specifying the extent of imprisonment, which cannot exceed 1 day for every \$2.00 of fine. In case the entry of judgment shall omit to direct the imprisonment and the extent thereof, the judgment to pay the fine shall operate to authorize and require the imprisonment of the defendant until the fine is satisfied at the rate above mentioned.

R. S. 1910, Title 18, C. 11, Sec 1577.

4. *\$1.00 for each day's confinement.*

INDIANA

In case such defendant do not immediately pay or replevy such judgment and costs the justice shall commit him to jail there to remain one day for each dollar of such fine and costs.

R. S. 1908, Sec. 1954.

NEW MEXICO

Whenever any person shall be committed to prison for non-payment of any fine or costs, such imprisonment shall be reckoned at the rate of \$1.00 per day in reduction of fine.

R. S. 1897, C. 9, Sec. 832.

UTAH

A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, specifying the extent of the imprisonment, which cannot exceed one day for every \$1.00 of the fine.

R. S. 1907, Title 91, C. 37, Sec. 4919.

5. *60 cents for each day's confinement.*

OHIO

When a fine is the whole or part of a sentence, the court may order that the person sentenced remain imprisoned in jail until such fine and costs are paid, or he is legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs at the rate of 60 cents per day for each day's imprisonment.

Laws 1910, H. B. 146.

6. $33\frac{1}{3}$ cents for each day's confinement.

VERMONT

A person committed to the House of Correction for non-payment of fine may be discharged on paying the balance of the fine, or fine and costs, after deducting $33\frac{1}{3}$ cents for each day he has been committed for such default.

R. S. 1906, C. 261, Sec. 6022.

7. \$2.00 for each day's labor.

NORTH DAKOTA

For each day's labor performed by any convict under the provisions of this chapter, there shall be credited on any judgment for fine and costs against him the sum of \$2.00.

R. S. 1905, Sec. 10446.

OKLAHOMA

For every day's labor performed by any convict, under the provisions hereof, there shall be credited on any judgment for fine and costs against him the sum of \$2.00.

R. S. 1903, Sec. 5728.

OREGON

Whenever any person shall be convicted of a criminal offense under any of the ordinances of a city or town, and shall be adjudged to pay a fine and costs and shall fail to pay the same, he shall be sentenced to labor one day for every \$2.00 of such fine upon the streets or other public works of said city under such officer as common council may provide; common council may provide such fetters and manacles as may be necessary to secure the person of such criminal during his term of labor.

R. S. 1910, Title 26, C. 4, Sec 3237.

SOUTH DAKOTA

For every day's labor performed by any convict under the provisions hereof, there shall be credited on any judgment for fine and costs against him the sum of \$2.00.

R. S. 1910, Sec. 749.

WISCONSIN

Any person sentenced to the watch-house or place of confinement of the village who is not physically disabled shall be compelled to perform labor upon any public work of said village, under such supervision and control as the village may provide, and for each day's labor performed the person so sentenced shall be credited with the sum of \$2.00, which shall apply on such fine and costs until same are paid, or until such person is released from custody.

Acts 1907, C. 117.

8. \$1.50 for each day's labor.

ILLINOIS

Any person convicted of petit larceny or any misdemeanor punishable under the laws of this state, may be compelled by Court of Record to work out fine and costs, in the work-house of the city, town or county, or in the streets and alleys of any town or city

R. S. 1897, Title 26, C. 1, Sec. 5657.

or on the public roads of the county, under the proper person in charge of such work-house at the rate of \$1.50 for each day's labor.

IOWA

For every day's labor performed by any convict under provisions of secs. 5652-4, shall be credited on any judgment for fine and costs against him the sum of \$1.50 and no person shall be entitled to the benefits of the law providing for the liberation of poor convicts, if, in the opinion of the sheriff, the judgment may be satisfied by the labor of the person as herein authorized.

R. S. 1897, Title 26, C. 1, Sec. 5657.

MINNESOTA

For each day's labor the prisoner shall be credited \$1.50 on any judgment for fine and costs, and, when imprisoned in default of payment of a fine or fine and costs, he shall be discharged whenever he has performed sufficient labor to pay the same. The officer in charge of such prisoners shall protect them from insult and annoyance, while at labor or going to and returning therefrom.

R. S. 1905, C. 106, Sec. 5471.

WYOMING

Whenever the defendant is sentenced to prison for the violation of a city ordinance, he shall be put to work for the benefit of the city, under the discretion of the mayor, for the term of his imprisonment, and when committed for the non-payment of a fine or costs he shall be put to work for the benefit of the city, and shall be credited on such fine and costs \$1.50 per day for each day he shall work.

R. S. 1910, C. 121, Sec. 1768.

9. \$1.00 for each day's labor.

ARIZONA

Whenever any prisoner shall be sentenced to pay a fine and to be committed until paid, shall be employed at hard labor, he shall be allowed the sum of \$1.00 for each day's labor to be credited on such fine, and when he shall have earned the amount of such fine he shall be discharged.

R. S. 1909, Title 15, Sec. 1201.

COLORADO

Whenever any prisoner sentenced to pay a fine and costs, shall be employed at hard labor, he shall be allowed the sum of \$1.00 for each day's labor and when he shall have earned the amount of such fine and costs he shall be discharged.

R. S. 1908, C. 35, Sec. 2024.

CONNECTICUT

County convicts committed for criminal offense and held for fine and costs are credited \$1.00 for each day's labor. Convicts may not be held more than 4 months.

R. S. 1902, C. 177, Sec. 2942.

KANSAS

Prisoners shall be allowed \$1.00 for each day's work performed by them in good faith or if prisoners prefer the

R. S. 1909, C. 97, Art. 18, Sec. 6942.

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| | Board of County Commissioners may allow each prisoner a specified sum per cubic yard for breaking stone. When the same, either by the day or the cu. yd. shall amount to the sum of the fine and costs, the same shall be deemed a full satisfaction. | |
| KENTUCKY | When punishment for a crime is a fine or imprisonment in the county jail or both, the jury may in their discretion, if the defendant is a male, provide in their verdict that the defendant shall work at hard labor until fine and costs are satisfied. The defendant shall not be required to labor more than 8 hours a day, and may at any time pay the costs, or whatever part thereof remains unpaid, after receiving credit of \$1.00 for each day worked in payment thereof. | R. S. 1909, C. 36, Secs. 1377-80. |
| LOUISIANA | In all criminal prosecutions where a person is convicted in any of the courts of the state of any crime punishable under the law with imprisonment at hard labor, but not necessarily so, the judge before whom such conviction is had may sentence person so convicted to work on the public roads or streets of parish or city in which crime was committed, and which may eventually be chargeable with costs of prosecution, for a term not exceeding term now specified; when a fine in said cases is imposed as part of the penalty, in default of liquidation thereof, the judge may sentence to hard labor at the rate of \$1.00 per day. | Acts of 1878, No. 38, Sec. 1. |
| MISSOURI | If the punishment be by fine and the fine be not paid, for every dollar of such fine the prisoner shall work one day and shall also work for such period of time as he would otherwise be required to remain in jail in order to be released from the payment of any costs, in such case. | R. S. 1909, Sec. 3733. |
| RHODE ISLAND | Fines can be worked off at fifty cents a day for first thirty days; and \$1.00 for ensuing days. | Laws 1911, C. 669. |
| WEST VIRGINIA | Any male prisoner imprisoned for failure to pay fine and costs may be ordered by the county court to work on the county roads, or on the streets or alleys of an incorporated city, under the direction of such officer as court may direct, at the rate of \$1.00 per day until fine and costs are paid. | R. S. 1906, C. 36, Sec. 1168. |
| WYOMING | In cases of vagrancy or petit larceny and in other cases in which a justice has jurisdiction to hear and determine, when the party charged is found guilty, it shall be lawful for the justice to | R. S. 1910, C. 399, Sec. 6111. |

sentence such person to imprisonment at hard labor or to fine him or both; and in default of payment of fine, the sheriff shall set him to work on any public improvements which he may deem proper. The rate of compensation to be allowed by the county for such prisoners shall be \$1.00 a day for services rendered in payment of fines imposed and costs incurred, when not paid in cash.

10. *75 cents for each day's labor.*

ALABAMA

The court may impose hard labor for the county for such period, not to exceed 10 mos., as may be sufficient to pay the costs, at the rate of 75 cents per day, and the court must determine the time required to work out the costs at this rate.

R. S. 1907, Art. 5, Sec. 7635.

ARKANSAS

Each person worked, as provided in the preceding section, shall be credited with the sum of 75 cents on the fine and costs adjudged against him for every full day's labor so performed by him when he is kept and fed by the overseer and shall be credited with the sum of \$1.00 for each day's labor when he boards himself.

R. S. 1904, Sec. 7353.

11. *40 cents for each day's labor.*

TENNESSEE

Each person confined in the workhouse for a failure to pay fine and costs, shall be credited at the rate of 40 cents for each day of actual work done and no prisoner shall be discharged upon the act of insolvency, nor before said fine and costs or costs only have been worked out, fully paid or secured, unless by order of the Board of Commissioners.

R. S. 1896, Title 7, Art. 5, Secs. 7417-21.

12. *30 cents for each day's labor.*

FLORIDA

No such convict shall be required to work more than 10 hours in each 24, and every such convict shall be entitled to receive, together with subsistence, a credit at the rate of 30 cents per diem on account of fines and costs adjudged against him.

R. S. 1906, Title 4, C. 2, Sec. 4113.

13. *25 cents for each day's labor.*

VIRGINIA

Any person held to labor, under the provisions of this chapter, for non-payment of any fine imposed upon him, shall be required to work out the full amount thereof, including the legal costs, at the rate of 25 cents per day, for each day so held, Sundays excepted, and shall be entitled to a credit of 25 cents for each day of his confinement, whether he labors or not. No

R. S. 1904, Title 53, C. 191, Sec. 3936.

person shall be held to labor in any chain gang for the non-payment of any fine imposed upon him for a longer period than 6 months.

14. *Added allowance for efficient labor.*

MISSISSIPPI

Any convict working under the direction of the Board of Supervisors, who renders efficient services and complies with all necessary rules and regulations, may have deducted from his fine and the term of his imprisonment one-fourth thereof.

R. S. 1906, C. 22,
Sec. 842.

15. *Journeyman's wage for like labor.*

CONNECTICUT

Prisoners held for costs only allowed the wages of journeymen for like labor. If in judgment of directors convict is unable to pay costs and has conducted himself well during his confinement warden may remit them.

R. S. 1902, C.
176, Sec. 2913.

16. *Amount obtained for prisoner's labor.*

MICHIGAN

Convicts committed in default of payment of fines shall be allowed the amount obtained for their labor, less the cost of their support. When amount of fine is completed they shall be discharged.

R. S. 1897, C. 86,
Sec. 12.

NEW HAMPSHIRE

Convicts committed in default of payment of fines shall be allowed the amount obtained for their labor, less the cost of their support.

R. S. 1901, C.
282, Sec. 15.

NEW JERSEY

When judgment is given in any of the courts of the state for fine or imprisonment, with or without costs, it shall be lawful to place the defendant against whom such judgment shall be rendered at labor in any county jail or penitentiary, until fine and costs are paid by the proceeds of such labor.

R. S. 1910, Page
1874, Sec. 162.

NORTH CAROLINA

The Board of Commissioners of the several counties may hire out persons imprisoned in jails who fail to pay all the costs they are adjudged to pay, provided the amount realized from hiring out such persons shall be credited to them on the fine and bill of costs in all cases of conviction.

Laws of 1908, C.
24, Sec. 4.

B. *Prisoners serving sentences, either fixed or indeterminate.*

The prisoner convicted of crime is sentenced for a fixed or indeterminate period to penal servitude. This period may be determined by statute, by the judge at the time of conviction, limited by the statutory designations as maximum and minimum penalty, or it may be indeterminate in that the maximum is designated but the actual time can be affected by

the conduct of the prisoner judged by a duly constituted board of judgment. Term or fixed sentences are still found for some crimes in every state. There are no indeterminate sentences prescribed by law as yet in Alabama, Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nevada, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin.

Sentences are Indeterminate in:

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| ARIZONA | For convicts over 18 years of age, for any crime, except treason and first degree murder, the maximum and minimum sentence to be that prescribed by law for the crime. | Laws 1912, C. 46. |
| COLORADO | For any person sentenced to prison for other than life term, the minimum sentence not to be less nor the maximum more than prescribed by law for the crime. | R. S. 1908, C. 35, Secs. 2037-8. |
| CONNECTICUT | For all persons except tramps or those with a life sentence, committed to prison or reformatory. The maximum not greater than specified by law; the minimum not less than one year. | R. S. 1902, Title 7, C. 97, Secs. 1535-7. |
| IDAHO | For all persons except those convicted of treason or murder of the first degree. Maximum shall not exceed the longest term fixed by law; the minimum shall not exceed the minimum fixed by statute, and no minimum to be less than 6 mos. and where the sentence may be for life or a number of years, the court shall fix maximum. | R. S. 1909, H. B. No. 214. |
| INDIANA | For any male persons thirty or over, convicted, except of treason, first and second degree murder. Minimum and maximum sentences to be those provided by law. | R. S. 1908, Sec. 2152. |
| ILLINOIS | For every male person over 21 and every female over 18 convicted of felony, except treason, murder, rape and kidnaping. The maximum shall not exceed maximum provided by law; the minimum not less than one year, making allowance for good time as provided by law. | R. S. 1909, C. 38, Sec. 498. |
| IOWA | For any person over 16, convicted of felony, except treason or murder. Maximum not more than provided by law; no minimum set forth. | R. S. 1907, Title 26, C. 2, Sec. 5718, a 13. |
| KANSAS | For all persons except those convicted of murder or treason. Minimum and maximum sentences those prescribed by law, subject to control of trial judge. | R. S. 1909, C. 97, Sec. 6837. |

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| KENTUCKY | For persons convicted of felony; maximum and minimum sentences provided by law. | Laws 1910, C. 4. |
| MASSACHUSETTS | For any convict sentenced to state prison except for life or as an habitual criminal. Minimum sentence not less than two and one-half years. Maximum not more than prescribed by law. Additional sentence begins at expiration of first minimum. | Laws 1911, C. 451. |
| MICHIGAN | For all convicts except life. When convict has served 25 years of life sentence less the commutation which would have been allowed if his sentence had been for 25 years, Governor has power to parole him. Minimum sentence not less than 6 months. Maximum not more than provided by law. Judge can recommend proper maximum. | Laws 1905, C. 184. Acts 1911, No. 237. |
| MINNESOTA | For all convicts except those convicted of treason or murder. Life prisoners not to be paroled until they have served 35 years less diminution for good conduct which would have been allowed if sentence had been 35 years. Maximum shall not exceed maximum provided by law; minimum not stated. | Laws 1911, C. 298. |
| NEBRASKA | For all convicts over 18 convicted of penitentiary offence, except murder, treason, rape, kidnaping or having served two previous terms. The maximum and minimum sentences to be provided by law. | Laws 1911, C. 184. |
| NEW HAMPSHIRE | For any convict sentenced to state prison except for life or as an habitual criminal. Maximum and minimum sentences to be those provided by law for his offense. | Laws 1909, C. 120. |
| NEW JERSEY | For all convicts sent to state prison except first degree murder. Maximum sentence as provided by law; minimum not less than one year, and not more than one-half of maximum. Where death sentence has been commuted minimum must be twenty-five years. | Laws 1911, C. 191. |
| NEW MEXICO | For all prisoners sent to the penitentiary. Court to fix minimum and maximum sentences. | Laws 1909, C. 32. |
| NEW YORK | For all first offenders convicted of felonies other than murder of first or second degree. Minimum sentence not less than 1 year or not more than ½ longest period fixed by law for crime. Maximum the longest period fixed by law. | Birdseye's Consolidated Laws, 1909, Art. 196, Sec. 2189. |
| NORTH DAKOTA | For any person convicted of felony except treason, murder of 1st degree, rape and kidnaping. Maximum and minimum sentences as provided by law. | R. S. 1909, C. 175. |

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|--------------|--|---|
| OHIO | Compulsory for all prisoners sent to state reformatory. | R. S. 1910, Sec. 2132. |
| | Optional for prisoners sent to state penitentiary. | R. S. 1910, Sec. 2160. |
| | Maximum and minimum sentences are optional with judge but minimum cannot be less than prescribed by law for offense committed, nor maximum greater than prescribed by law. | R. S. 1910, Secs. 2141-4 & Secs. 2167-75. |
| PENNSYLVANIA | For any person sentenced to the penitentiary. Maximum and minimum sentences to be determined by judge but maximum cannot be more than prescribed by law nor minimum more than one-fourth of maximum. | R. S. 1909, pp. 5329-31, Sec. 6. |
| SOUTH DAKOTA | For all first offenders over 16, subject to a penitentiary sentence, except for treason or murder, or convicts with abnormal tendencies. Maximum and minimum sentences to be prescribed by law. | Laws 1911, C. 169. |
| WYOMING | For all convicts sentenced to the penitentiary otherwise than for life. The maximum sentence to be no longer than prescribed by law and the minimum not less than minimum prescribed. Both to be regulated by judge. | R. S. 1910, C. 42, Secs. 530-531. |

C. Prisoners awaiting capital punishment

Pending the execution of the death penalty, prisoners so sentenced are confined in a penal institution. Capital punishment has been abolished in Kansas (R. S. 1909, sec. 2496), Maine (R. S. 1903, C. 119, sec. 1), Minnesota (laws, 1911, H. F. No. 2), Michigan (R. S. 1897, sec. 11470), Rhode Island (R. S. 1909, C. 343, secs. 1 and 2) except for life prisoners who commit murder, Wisconsin (R. S. 1889, C. 181, sec. 4338). Provisions determining confinement for prisoners awaiting execution and the manner of their execution are found in the following states:

| | |
|----------------------|--|
| ALABAMA | R. S. 1907, C. 165, Sec. 6310. R. S. 1907, C. 278, Sec. 7639. |
| ARIZONA | R. S. 1901, Title 8, C. 1, Sec. 174. |
| ARKANSAS | R. S. 1904, C. 49, Sec. 2441. |
| CALIFORNIA | Penal Code, 1909, Title 8, C. 2, Sec. 1217. |
| COLORADO | R. S. 1908, C. 35, Sec. 2028. |
| CONNECTICUT | R. S. 1902, C. 82, Sec. 1141. |
| DELAWARE | R. S. 1893, C. 32, Sec. 11. |
| DISTRICT OF COLUMBIA | R. S. 1911, C. 19, Sec. 801. |
| FLORIDA | R. S. 1906, Div. 5, Title 2, C. 2, Sec. 3205. |
| GEORGIA | R. S. 1911, Sec. 1069. |
| IDAHO | R. S. 1908, P. 2, Title 8, Sec. 8020. |
| INDIANA | R. S. 1908, Sec. 2196. |
| ILLINOIS | R. S. 1909, Page 827, Sec. 439. |

| | |
|----------------|--|
| IOWA | R. S. 1897, Sec. 4728. |
| KENTUCKY | R. S. 1909, C. 36, Sec. 1149. |
| LOUISIANA | R. S. 1904, Sec. 975. |
| MARYLAND | R. S. 1904, Art. 27, Sec. 335. |
| MASSACHUSETTS | R. S. 1902, C. 207, Sec. 2. |
| MISSISSIPPI | R. S. 1908, C. 29, Sec. 1512. |
| MISSOURI | R. S. 1909, Sec. 4450. |
| MONTANA | R. S. 1907, P. 1, Title 8, C. 1, Sec. 8293. |
| NEBRASKA | R. S. 1911, P. 1, C. 1, Secs. 2050-2052. |
| NEVADA | R. S. 1912, Sec. 6386. |
| NEW HAMPSHIRE | R. S. 1901, C. 255, Sec. 6. |
| NEW JERSEY | R. S. 1910, Page 1781, Sec. 108. |
| NEW MEXICO | R. S. 1897, C. 2, Sec. 1066. |
| NEW YORK | Penal Law, 1909, C. 4, Sec. 1044. |
| NORTH CAROLINA | R. S. 1908, C. 81, Sec. 3631. |
| NORTH DAKOTA | R. S. 1905, C. 18, Sec. 8799. |
| OHIO | R. S. 1910, Part 4, Title 1, C. 3, Sec. 12400. |
| OKLAHOMA | R. S. 1903, C. 25, Art. 17, Sec. 2174. |
| OREGON | R. S. 1910, Title 19, C. 2, Sec. 1903. |
| PENNSYLVANIA | R. S. 1903, Page 3486, Sec. 9. |
| SOUTH CAROLINA | R. S. 1902, Criminal Code, C. 10, Sec. 136. |
| SOUTH DAKOTA | R. S. 1910, C. 17, Sec. 253. |
| TENNESSEE | R. S. 1896, P. 4, C. 2, Sec. 6442. |
| TEXAS | R. S. 1895, Title 9, C. 4, Sec. 861. |
| UTAH | R. S. 1907, C. 14, Sec. 4162. |
| VERMONT | R. S. 1906, Title 12, C. 114, Sec. 2366. |
| VIRGINIA | R. S. 1904, Title 52, C. 180, Sec. 3663. |
| WASHINGTON | R. S. 1910, Title 14, C. 5, Sec. 2392. |
| WEST VIRGINIA | R. S. 1906, C. 152, Sec. 4454. |
| WYOMING | R. S. 1910, C. 385, Sec. 5789. |

III

HOW MAY HE BE PUNISHED?

Punishment prescribed by the court, should it exceed the statutory provision,¹ or the common acceptance of just penalty,² may be declared void and the servitude terminated.³

Cruel and Unusual Punishments are Prohibited in:

| | |
|----------------|--|
| ALABAMA | R. S. 1907, Sec. 6543. |
| ARIZONA | Const. 1910, Art. 2, Sec. 15. |
| ARKANSAS | Const. 1874, Art. 2, Sec. 9. |
| COLORADO | Const. 1876, Art. 2, Sec. 20. |
| FLORIDA | Const. 1885, D. of R., Sec. 8. R. S. 1906, Art. 6, Sec. 4139. |
| GEORGIA | Const. 1877, Art. 1, Par. 9. |
| IDAHO | Const. 1889, Art. 1, Sec. 6. |
| ILLINOIS | R. S. 1909, C. 108, Sec. 37. |
| INDIANA | Const. 1851, Art. 1, Sec. 16. R. S. 1908, C. 124, Sec. 9864. |
| IOWA | Const. 1857, Art. 1, Sec. 17. |
| KANSAS | Const. 1859, B. of R., Sec. 9. R. S. 1909, C. 108, Sec. 8583. |
| KENTUCKY | Const. 1890, B. of R., Sec. 17. Rev. 1909, C. 97, Sec. 3797. |
| LOUISIANA | Const. 1898, Art. 12. |
| MAINE | Const. 1819, Art. 1, Sec. 9. |
| MARYLAND | Const. 1867, D. of R., Art. 25. |
| MASSACHUSETTS | Const. 1780, P. 1, Art. 26. |
| MICHIGAN | Const. 1850, Art. 6, Sec. 31. |
| MINNESOTA | Const. 1857, Art. 1, Sec. 5. |
| MISSISSIPPI | Const. 1890, Art. 3, Sec. 28. |
| MISSOURI | Const. 1875, Art. 2, Sec. 25. |
| MONTANA | Const. 1889, Art. 3, Sec. 20. |
| NEBRASKA | Const. 1875, Art. 1, Sec. 9. |
| NEVADA | Const. 1910, Art. 1, Sec. 6. R. S. 1912, Art. 8, Sec. 178. |
| NEW MEXICO | Const. 1910, Art. 2, Sec. 13. |
| NEW JERSEY | Const. 1897, Art. 1, Sec. 15. |
| NEW YORK | Const. 1894, Art. 1, Sec. 5. |
| NORTH CAROLINA | Const. 1876, Art. 1, Sec. 14. |
| NORTH DAKOTA | Const. 1889, Art. 1, Sec. 6. |
| OHIO | Const. 1851, Art. 1, Sec. 9. |
| OKLAHOMA | Const. 1907, Art. 2, Sec. 9. |
| OREGON | Const. 1857, Art. 1, Sec. 16. |
| PENNSYLVANIA | Const. 1873, Art. 1, Sec. 13. |
| RHODE ISLAND | Const. 1842, Art. 1, Sec. 8. |
| SOUTH CAROLINA | Const. 1895, Art. 1, Sec. 19. |
| SOUTH DAKOTA | Const. 1889, Art. 6, Sec. 23. |
| TENNESSEE | Const. 1870, Art. 1, Sec. 16. |

¹ Robinson v. Miner, 68 Mich., 549.

² State v. Driver, 78 N. Car., 423. State v. Miller, 75 N. Car., 73.

³ Amer. and English Ency. of Law, 2d edit., vol VIII, pp. 436-440.

| | |
|---------------|---------------------------------|
| TEXAS | Const. 1876, B. of R., Sec. 13. |
| UTAH | Const. 1896, Art. 1, Sec. 9. |
| VIRGINIA | Const. 1902, Art. 1, Sec. 9. |
| WASHINGTON | Const. 1889, Art. 1, Sec. 14. |
| WEST VIRGINIA | Const. 1872, Art. 3, Sec. 5. |
| WISCONSIN | Const. 1848, Art. 1, Sec. 6. |
| | R. S. 1898, Sec. 4923. |
| WYOMING | Const. 1889, Art. 1, Sec. 14. |

The sentence of the court whether expressly provided or not is understood to be a sentence to hard labor.

Punishment Exceeding Hard Labor is Prohibited in:

| | | |
|-----------|----------------------|---|
| TENNESSEE | Workhouse prisoners. | R. S. 1896, Title 7, Art. 4, Sec. 7391. |
|-----------|----------------------|---|

Punishment other than hard labor is often permitted, defined and prescribed by law. Indeed, hard labor, under reasonable restrictions as required in most prisons, is healthful for mind and body and, in the judgment of prisoners is a veritable boon, compared with enforced idleness. For disciplinary purposes, therefore, other forms of punishment have been instituted by prison authorities and oftentimes are of a character that amounts to torture. Hence, it has become necessary to define by statute the parts of such punishment as may amount to torture and to define definitely those that are permitted and those that are prohibited. The following special forms of punishment are regulated in the several states as follows:

1. Solitary Confinement is permitted in:

| | | |
|---------------|---|---|
| DELAWARE | Bread and water diet. | R. S. 1893, C. 133, Sec. 5. |
| IDAHO | Bread and water diet. | R. S. 1098, Sec. 8502. |
| INDIANA | Bread and water diet. | R. S. 1908, C. 124, Sec. 10036. |
| IOWA | | R. S. 1907, Title 26, C. 2, Sec. 5675. |
| KANSAS | Deprivation of light and limitation of food so as to produce distress but not hazard the life of the convict. | R. S. 1909, C. 108, Art. 30, Sec. 8583. |
| LOUISIANA | | R. S. 1904, Sec. 2864. |
| MAINE | Bread and water diet. | R. S. 1903, C. 141, Sec. 39. |
| MARYLAND | 10 days on bread and water. | R. S. 1904, Art. 27, Sec. 640. |
| MASSACHUSETTS | Solitary labor; bread and water diet unless physician directs otherwise. | R. S. 1902, C. 225, Secs. 34 & 35. |

MICHIGAN

R. S. 1897, C.
75, Sec. 37.

NEW HAMPSHIRE

Life prisoners who assault prison officials or attempt escape may be sentenced to six months.

R. S. 1901, C.
285, Sec. 12.

Other prisoners for 30 days.

R. S. 1901, C.
285, Sec. 15.

OKLAHOMA

Not more than 3 days; bread and water diet unless other food is necessary for preserving health of convict.

R. S. 1903, Sec.
5731.

PENNSYLVANIA

Confinement may be at hard labor.

R. S. 1907, Page
2010, Sec. 1,
Page 3486, Sec.
11.

SOUTH CAROLINA

R. S. 1902, Title
2, C. 33, Sec.
661.

TENNESSEE

Bread and water diet; not more than 30 days for one offense.

R. S. 1896, Secs.
7537-8.

UTAH

R. S. 1907, Sec.
2262.

WISCONSIN

Bread and water diet.

R. S. 1898, Title
34, C. 201, Sec.
4917.

2. Dungeons are permitted in:

NEW MEXICO

Jail prisoners may be confined 1 week on bread and water.

R. S. 1897, Title
7, C. 9, Sec.
830.

NEW JERSEY

Solitary confinement on bread and water diet with chain on leg or handcuffs or both for six days.

R. S. 1910, Page
4913.

NEW YORK

Short allowance prescribed by physician.

R. S. 1909, C. 47,
Art. 6, Sec. 154.

OREGON

Every jail to have one cell or dungeon for confinement of criminals sentenced to solitary confinement.

R. S. 1910, C. 14,
Sec. 4525.

SOUTH DAKOTA

On bread and water diet. Not more than three days for one offense.

R. S. 1910, Title
12, Secs. 673 &
752.

VIRGINIA

R. S. 1904, Sec.
4143.

3. Blood Hounds are permitted in:

SOUTH CAROLINA

To be kept for the purpose of tracking fugitive convicts.

R. S. 1902, Title
2, C. 32, Sec.
659.

VIRGINIA

To be maintained at the expense of the county.

Acts of 1910, C.
213.

4. Shackles and Chains:

(A) Permitted in:

ALABAMA

Only with consent of inspectors.

R. S.
1907,
Sec.

6545.

CONNECTICUT

R. S.
1902,
Sec.

2900.

(B) Prohibited in:

LOUISIANA

R. S.

1904,

Page

1315,

Sec. 2.

| (A) Permitted in: | | (B) Prohibited in: | |
|-------------------|--|---|---|
| COLORADO | Convicts at work on streets, quarries, or in mines. | R. S. 1908, Sec. 2023. | NEW JERSEY Shackled convicts may not be marched through the streets of any community, nor employed under guard upon public improvements where free labor is employed. |
| FLORIDA | Municipal convicts who have escaped and been recaptured. | R. S. 1906, Art. 2, Sec. 4114. | |
| GEORGIA | Chain gang permitted. | R. S. 1911, Sec. 697. | Acts of 1911, C. 372. |
| IDAHO | Ball and chain attached to one leg. | R. S. 1908, Sec. 8502. | |
| KANSAS | Ball and chain so used as not to torture limbs. | R. S. 1909, C. 108, Art. 30, Sec. 8583. | |
| MASSACHUSETTS | Log and chain for county prisoners. | R. S. 1902, C. 225, Sec. 37. | |
| NEW JERSEY | Chain on leg or handcuffs, or both, permitted on prisoners in solitary confinement. | R. S. 1910, Page 4913. | |
| OKLAHOMA | | R. S. 1903, Sec. 5731. | |
| PENNSYLVANIA | Keepers of county jails may put iron yokes round prisoner's neck, chains on leg, or otherwise restrain in irons. | R. S. 1907, Page 2011, Sec. 1. | |
| SOUTH CAROLINA | Chain gangs permitted, for convicts with sentence under five years. | R. S. 1902, Sec. 772-3. | |
| SOUTH DAKOTA | Ball and chain for county convicts. | R. S. 1910, Title 12, Sec. 745. | |
| WASHINGTON | Ball and chain for county convicts. | R. S. 1910, Sec. 8493. | |
| WEST VIRGINIA | Ball and chain for county convicts. | R. S. 1906, C. 36, Sec. 1168. | |

5. *Reduction of Food.*

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|--|------------------------|--------------------|---|--------------------------------|
| TENNESSEE | Jail prisoners refusing to work to have only one meal a day until they do good work. | Laws 1899, C. 358. | FLORIDA | Labor without food. | R. S. 1906, Art. 6, Sec. 4139. |
| VIRGINIA | With the consent of the Governor misdemeanor or not amounting to felony may be punished with lower and coarser diet. | R. S. 1904, Sec. 4143. | MONTANA | Rations may not be reduced without reducing the amount of labor required. | R. S. 1907, Sec. 9736. |
| | | | NEVADA | Rations may not be reduced unless hours of labor are reduced. | R. S. 1912, Sec. 7579. |

6. *The Gag, Iron Mask, etc.*

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|--|------------------------|--------------------|--|------------------------------|
| VIRGINIA | | R. S. 1904, Sec. 4143. | CONNECTICUT | Fine of \$50.00 for officer using gag. | R. S. 1902, Sec. 2924. |
| | | | MASSACHUSETTS | Fine of \$50.00 for officer using gag. | R. S. 1902, C. 225, Sec. 33. |

7. *Corporal Punishment.*

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|--|--------------------------------|--------------------|----------------------------------|---|
| ALABAMA | Administered only by party authorized by President of Board of Inspectors. | R. S. 1907, Sec. 6543. | GEORGIA | | Const. 1877, Art. 1, Par. 7. |
| CONNECTICUT | Moderate whipping, not exceeding 10 stripes for one offense. | R. S. 1902, Sec. 2900. | ILLINOIS | | R. S. 1909, C. 108, Sec. 37. |
| DELAWARE | In extreme cases overseer with consent of one commissioner may inflict moderate whipping. | R. S. 1893, C. 54, Sec. 10. | KANSAS | | R. S. 1909, C. 108, Art. 30, Sec. 8583. |
| | Whipping may only be inflicted by agents of the board. | Laws of 1905, C. 125. | MAINE | | R. S. 1903, C. 141, Sec. 10. |
| GEORGIA | Whipping Boss to be appointed by County or municipal authorities, which fix his compensation and prescribe his duties. | R. S. 1911, Title 7, Sec. 858. | MICHIGAN | Whipping with lash on bare body. | R. S. 1897, C. 75, Sec. 40. |
| | | | MONTANA | | R. S. 1907, Sec. 9736. |
| | | | NEVADA | | R. S. 1912, Sec. 7590. |

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|---|---|--------------------|-----------------------|--|
| INDIANA | Only by order of Warden in presence of prison physician and moral instructors of prison. Not until 12 hours after offense and only between the hours of 8 and 10 a. m. | R. S. 1908, C. 124, Sec. 9867. | NEW MEXICO | | R. S. 1897, Sec. 1056. |
| | | | NEW JERSEY | | R. S. 1910, Page 4913, Art. 7. |
| KENTUCKY | In presence of Warden. Not until 12 hours after offense. | R. S. 1909, C. 97, Sec. 3797. | NEW YORK | Blows. | R. S. 1909, C. 47, Art. 6, Sec. 153. |
| LOUISIANA | Board of Control responsible that punishment is not harsh or severe. | Acts of 1900, No. 70, Sec. 6. | UTAH | Whipping with a lash. | R. S. 1907, Sec. 2266. |
| MARYLAND | 13 lashes maximum; warden may authorize under officers to inflict one to five lashes; to be resorted to as little as possible. | R. S. 1904, Art. 27, Sec. 640. | WISCONSIN | | R. S. 1898, Title 34, C. 201, Sec. 4923. |
| MICHIGAN | Only in presence of prison physician. | R. S. 1897, C. 75, Sec. 40. | | | |
| MISSISSIPPI | Superintendent allows farm sergeants the privilege of inflicting corporal punishment; farm sergeants forbidden the use of intoxicants. | R. S. 1906, C. 107, Sec. 3602. | | | |
| RHODE ISLAND | Only under direction of at least two members of board. | Sec. 3617. R. S. 1909, C. 360, Sec. 23. | | | |
| TEXAS | Whipping not exceeding 20 lashes on the bare rump and thigh to prisoners of the third class; strap to be of leather, not over 2½ inches wide and 24 inches long, attached to a wooden handle; | R. S. 1911, Title 19, Page 1637. | | | |

(A) Permitted in:

whipping must be authorized by 2 members of board of commissioners; physician must be present; skin of convict must not be broken.

UTAH

Only in presence of physician.

R. S.
1907,
Title 57.
Sec.
2266.

(B) Prohibited in:

8. *Showering with Cold Water is prohibited in:*

MICHIGAN

R. S. 1897, C.
75, Sec. 40.

MONTANA

R. S. 1907, Sec.
9736.

NEW YORK

R. S. 1909, C. 47,
Art. 6, Sec. 153.

UTAH

R. S. 1907, Sec.
2266.

9. *Stocks are prohibited in:*

DELAWARE

Laws of 1905, C.
213.

10. *Crucifix, Yoke and Buck are prohibited in:*

NEW YORK

R. S. 1909, C. 47,
Art. 9, Sec. 153.

11. *Punishment Injurious to Mind or Body is prohibited in:*

FLORIDA

R. S. 1906, Art.
6, Sec. 4139.

KANSAS

Binding the limbs or any member thereof or keeping prisoner in painful posture.

R. S. 1909, C.
108, Art. 30,
Sec. 8583.

12. *Greater or More Severe Punishment than Prescribed by Board is prohibited in:*

ARKANSAS

Officer inflicting such punishment guilty of felony and liable to imprisonment from one to five years. If death ensues he and his abettors guilty of murder or manslaughter.

R. S. 1904, Sec.
5923.

IV

HOW CAN HE BE WORKED?

The prisoner is the property of the state or a subdivision of the state while he is in penal servitude. This property right the state or its subdivision may lease or retain for its own use, the manner being set forth in state constitutions and acts of legislatures.¹

1. *He May be Leased to Individuals for Work Outside the Institution :*

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|--|---|--------------------|---|--|
| ALABAMA | State convicts. | R. S. 1907, C. 191, Sec. 6484. | ALABAMA | Leasing to relatives. | R. S. 1907, C. 191, Sec. 6528. |
| | County convicts. | R. S. 1907, C. 191, Sec. 6580-1. | IOWA | For road work. | R. S. 1897, Title 4, C. 6, Sec. 5654. |
| | Not more than 20 state or county convicts to be hired to one person at the same time. Leasing to relatives prohibited. | R. S. 1907, C. 191, Sec. 6528. | KANSAS | Employment under contract outside prison prohibited. | R. S. 1909, Sec. 8595. |
| ARKANSAS | County convicts. | R. S. 1904, Sec. 1101. | TENNESSEE | A misdemeanor to hire out a female convict, either as cook, washerwoman or for any other purpose. | R. S. 1897, C. 125, Sec. 28. |
| FLORIDA | No act leading to leasing permitted until July, 1913. | R. S. 1907, Sec. 4146. Acts of 1911, Com. Res. 12. | UTAH | The labor of convicts outside the prison grounds, except on public works under the direct control of the state. | Const. 1895, Art. 16, Sec. 3. |
| LOUISIANA | County convicts leased for road work. | Laws of 1894, No. 29. | | | |
| | No convict whose sentence is for more than 2 years to be leased and none to be leased out of county where convicted. | R. S. 1904, Page 1313, Sec. 2. | | | |

¹ Whitin, E. Stagg, "Penal Servitude," Introduction.

| (A) Permitted in: | | (B) Prohibited in: | |
|-------------------|--|--------------------------------|--|
| NORTH CAROLINA | County prisoners. | R. S. 1908, C. 24, Sec. 1352. | |
| SOUTH CAROLINA | County convicts to be leased for road work. | R. S. 1902, C. 20, Sec. 777. | |
| TENNESSEE | The more able-bodied short-term convicts, not otherwise employed or that cannot be employed within the walls or on the farm, may be employed under contract in road-building, farming, etc., where competing the least with free labor. Any contract of more than ninety days to be approved by Governor, Secretary of State and Attorney General. | Laws of 1897, C. 125, Sec. 31. | |

2. Leased to Individuals for Work Inside the Institution.

| (A) Permitted in: | | (B) Prohibited in: | |
|-------------------|--|--------------------|---|
| COLORADO | | CALIFORNIA | Laws of 1911, P. I. C. 56. |
| | R. S. 1908, C. 108, Sec. 4851. | | |
| CONNECTICUT | No contract for more than 4 years. | GEORGIA | No contract whereby contractor is interested in amount of work done by prisoners. |
| IDAHO | | | At Reformatory. |
| | R. S. 1908, Sec. 8461. | INDIANA | |
| INDIANA | Labor of 400 convicts to be leased, and if population exceeds 800, fifty per cent of number above 800 to be leased also; number of convicts in one in- | | Laws of 1911, C. 212. |
| | R. S. 1908, C. 124, Secs. 9845-9847. | ILLINOIS | R. S. 1909, C. 108, Sec. 79. |
| | | KANSAS | Reformatory prisoners. |
| | | | R. S. 1909, C. 108, Art. 131, Sec. 748. |

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|--|--|--------------------|---|-------------------------------------|
| | dustry not to exceed 100; no contracts to run beyond Oct. 1, 1910. | | MICHIGAN | No new contracts after Dec. 11, 1911. | Laws of 1909, No. 140. |
| IOWA | Warden with consent of executive council to make contracts. Contracts to run 10 years. | R. S. 1897, Sec. 5702. | MINNESOTA | After expiration of existing contracts. | R. S. 1905, C. 105, Sec. 5447. |
| KANSAS | Contracts not to exceed 6 years and to go to the highest bidder; price not less than 45 cents per day per man. | R. S. 1909, C. 108, Sec. 8591. | | At Reformatories. | 5458. |
| KENTUCKY | Contract to run 4 years. | R. S. 1909, C. 97, Art. 1, Secs. 13, 15, 17. | MISSISSIPPI | State convicts. | Const. 1890, Art. 10, Sec. 223. |
| MAINE | Warden to make contracts; not more than 20 per cent of male convicts to be employed at one time in one industry and, so far as practicable, convicts to manufacture goods not manufactured elsewhere in the state. | R. S. 1903, C. 141, Secs. 19, 31. | | County convicts. | Laws of 1908, S. B. No. 83. |
| MARYLAND | Directors to make contracts. | R. S. 1904, Art. 27, Sec. 565. | MISSOURI | After expiration of contracts existing in 1911. | Laws of 1911, S. B. No. 23. |
| MASSACHUSETTS | Copies of all contracts at all times to be public documents. | R. S. 1902, C. 225, Sec. 50. | MONTANA | | Const. 1889, Art. 18, Sec. 2. |
| MINNESOTA | Under name of "piece-price." | R. S. 1905, C. 105, Sec. 5447. | NEW MEXICO | | Const. 1910, Art. 20, Sec. 18. |
| NEBRASKA | As rapidly as it can be done, state to provide for employment of convicts on its own account; contracts not to extend over 3 years. | R. S. 1911, Sec. 10166. | NEW JERSEY | | Laws of 1911, S. B. 150. |
| | | | NEW YORK | | Const. 1904, Art. 3, Sec. 29. |
| | | | NORTH DAKOTA | | R. S. 1905, Sec. 10394. |
| | | | LOUISIANA | Leasing for other than road work prohibited. | R. S. 1904, Page 1315, Art. 2. |
| | | | OHIO | | Const. Amdt. 1912, Art. 2, Sec. 41. |
| | | | OKLAHOMA | | Const. 1907, Art. 23, Sec. 2. |

| (A) Permitted in: | | (B) Prohibited in: | |
|-------------------|--|--------------------|--|
| NEVADA | State convicts. | OREGON | For manufacture of overalls, shirts, underwear, boots or shoes, or any clothing, head or foot gear of any description. |
| | | | R. S. 1910, Sec. 4519. |
| | County convicts. | PENNSYLVANIA | After expiration of existing contracts, convicts to be employed on behalf of the state. |
| NEW HAMPSHIRE | Governor with advice of council makes contracts. | | R. S. 1895, page 3487, Sec. 18. |
| NORTH CAROLINA | State prisoners. | UTAH | Sec. 697. R. S. 1910, Sec. 2257. Const. 1895, Art. 16, Sec. 3. |
| | | | WASHINGTON After Jan. 1, 1890. |
| OREGON | Contracts not to exceed 10 years; price not less than 35 cents per day per man. | | Const. 1889, Art. 2, Sec. 29. |
| SOUTH DAKOTA | Contracts not to exceed 5 years. | WYOMING | Laws of 1911, C. 61. |
| RHODE ISLAND | | | |
| TENNESSEE | Not more than 199 men under any contract until July 1, 1915. | | |
| | County convicts. | | |
| VERMONT | Contracts not to exceed 5 years. | | |
| VIRGINIA | Convicts who, because of health, character or disposition, are deemed unsafe for road work, may be hired out to work at Penitentiary, provided number of convicts so hired, exclusive of women, does not exceed 500; | | |

(A) Permitted in:

and provided further that the present contract shall not be renewed; nor shall any contract be made if convicts can be profitably worked without a contract. No contract to exceed 5 years. Contracts to be made with the consent of the Board of Directors, Governor and Secretary of State Board of Charities, or a majority of them, of which the Board of Directors shall be one. The tasks provided under all contracts to be fixed by the Superintendent.

WISCONSIN

Contracts not to exceed five years.

R. S.
1889,
Sec.

4938.

WEST

VIRGINIA

R. S.
1906,
Secs.
4659-
4677.

(B) Prohibited in:

3. *The State may work him in State Industries for State consumption:*

CALIFORNIA

Laws of 1911, P.
1, C. 56.

IDAHO

Preparing grounds, and manufacturing material for state sanitarium.

Laws of 1911, C.
41.

INDIANA

Reformatory.

Acts of 1911, C.
212.

KANSAS

Coal mined by convict labor.

R. S. 1909, C.
108, Art. 30,
Sec. 8596-8600.

MASSACHUSETTS

Extension of market to all public institutions, state and county.

Laws of 1910, C.
414.

MISSOURI

Beginning April 1, 1912, at least 300 state convicts are to be added each year to number employed under state use till all are so employed.

Laws of 1912, C.
565.
Laws of 1911, C.
414.

NEW JERSEY

Laws of 1911, S.
B. 150.

NEW YORK

Const. 1894, Art.
3, Sec. 29, Laws
of 1909, C. 47,
Sec. 175.

"The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several state prisons, penitentiaries, jails and reformatories in the state; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof."—N. Y. State Constitution, 1894, Art. 3, Sec. 29.

| | | |
|---------------|--|--|
| NORTH DAKOTA | Factory for supplying equipment for schools and public institutions to be established from profits of brickyard. County convicts. | Laws of 1911, C. 205. R. S. 1905, Sec. 10442. |
| OHIO | | Laws of 1911, H. B. 946. |
| PENNSYLVANIA | After expiration of existing contracts convicts may manufacture for state institutions. | R. S. 1895, pg. 3487, Sec. 18. |
| UTAH | The Board of Corrections is authorized to employ such number of convicts as it may deem proper in the manufacture of clothing and equipage for the national guard. | R. S. 1907, Title 48, Sec. 1477. |
| VIRGINIA | Convicts deemed unsafe for road work may be employed by the Penitentiary Board in work for the state. | Laws of 1912, C. 59. |
| WEST VIRGINIA | Convicts not working on contract or hired out may manufacture articles for the state. | R. S. 1903, C. 163, Sec. 39. |
| WYOMING | | Laws of 1911, C. 61. |

4. *The State may work him on farms for State consumption:*

| | | |
|------------|--|--------------------------|
| NEW JERSEY | To be given preference in development of state use industries. | Laws of 1911, S. B. 150. |
| OHIO | | Laws of 1911, H. B. 146. |

5. *The State may work him on Public Works.*

| (A) Permitted in: | | | (B) Prohibited in: | | |
|-------------------|---|--|--------------------|---------------------|--------------------------------|
| ALABAMA | County convicts; to be worked in squads with other persons liable to road duty. | R. S. 1907, C. 191, Secs. 6580 and 6581. | ALABAMA | For women convicts. | R. S. 1907, C. 191, Sec. 6582. |
| | | | KENTUCKY | State convicts. | Const. 1891, Sec. 253. |
| ARKANSAS | County convicts. | R. S. 1904, C. 37, Sec. 1066. | MISSISSIPPI | For women convicts. | R. S. 1906, C. 22, Sec. 874. |

| (A) Permitted in: | | (B) Prohibited in: | |
|-------------------|--|--------------------|---|
| ARIZONA | So that labor does not interfere with free labor. | WISCONSIN | Stone crushing prohibited for women convicts. Acts of 1909, C. 333. |
| CALIFORNIA | County convicts. | | |
| COLORADO | State convicts. | | |
| | County convicts. | | |
| CONNECTICUT | Guards to accompany prisoners laboring outside prison walls. | | |
| DELAWARE | | | |
| FLORIDA | County prisoners. | | |
| GEORGIA | | | |
| IDAHO | State convicts in building walls, ditches, etc., on prison grounds. | | |
| | County prisoners not physically disabled. | | |
| ILLINOIS | In preparing road material, fertilizer and deepening channels of rivers. | | |
| INDIANA | County convicts in county wherein convicted. | | |
| IOWA | County convicts. | | |
| | Able bodied male convicts; not to be leased when so employed; breaking of stone for convicts not otherwise employed. | | |

| (A) Permitted in: | | (B) Prohibited in: |
|-------------------|---|--|
| KANSAS | <p>Convicts not employed under contract or in coal mining.</p> <p>County convicts.</p> | <p>R. S. 1909, C. 108, Art. 30, Sec. 8604.</p> <p>Sec. 6942.</p> <p>R. S. 1903, C. 110, Art. 1, Sec. 4322.</p> |
| KENTUCKY | County convicts. | Acts of 1900, No. 70, Sec. 14. |
| LOUISIANA | Board to contract for building of public roads, levees, and to bid in the same way as a private concern. | |
| MAINE | Upon written application from county or municipal authorities, Board of Inspectors may direct that jail prisoners be worked on county roads. | Laws of 1905, C. 126. |
| MARYLAND | <p>Sheriffs of certain counties permitted to work convicts over 16 years of age on public roads.</p> <p>Prisoners in the county jail of Garrett county whose term of commitment does not exceed one year, may be sentenced to hard labor on the roads of that county, under the direction of the town or county commissioners, but their hours of labor may not exceed ten a day.</p> <p>Convicts of Frederick county may be employed by sheriff on the public roads of the county.</p> | <p>Laws of 1906, C. 36.</p> <p>Laws of 1912, C. 597.</p> <p>Laws of 1912, C. 386.</p> |

| (A) Permitted in: | | (B) Prohibited in | |
|-------------------|---|---------------------------------|--|
| MASSACHUSETTS | County convicts may prepare road material using only hand or foot power. | R. S. 1902, C. 225, Sec. 59. | |
| | Employment in caring for public lands and buildings. | R. S. 1908, Page 1469, Sec. 1. | |
| MICHIGAN | All able-bodied state prisoners may be placed on the county roads; the award of labor to the highest bidder; expense of guarding "if guards are necessary" is borne by prison authorities. Transportation, housing, food, and tools by the county road commissioners; stone crushing and light work is allowed but nothing requiring skilled labor. | Acts of 1911, No. 181. | |
| | County convicts. | Acts of 1910, No. 10. | |
| MINNESOTA | County convicts. | R. S. 1905, C. 106, Sec. 5468. | |
| MISSISSIPPI | So that they remain under state control. | Const. 1890, Art. 10, Sec. 224. | |
| | No guarding by trustees. | R. S. 1906, C. 107, Sec. 3603. | |
| | Convicts over eighteen years of age and under fifty sentenced to the farms of four counties may be required to work fifteen | C. 22, Sec. 870. | |

(A) Permitted in:

(B) Prohibited in:

| | | |
|------------|---|--|
| | days on the public roads of the counties where they are held as prisoners. Work to be performed under supervision of Supt. of pen. County supervisors to furnish suitable quarters for the men. | |
| MISSOURI | 300 state convicts may be employed on public works. County convicts. | Laws of 1911, S. B., 23. R. S. 1909, C. 34, Art. 5, Sec. 3732-33. |
| MONTANA | State convicts. County convicts. | R. S. 1907, P. 3, Title 1, Sec. 9729. R. S. 1907, P. 3, Title 2, Sec. 9775. |
| NEBRASKA | County convicts. | R. S. 1911, C. 49, Sec. 2695. |
| NEVADA | Male convicts in state prison may labor on roads if they desire and if warden and Board are willing. County convicts leased for public works. | Laws of 1911, C. 71. |
| NEW JERSEY | Convict Labor Commission to formulate plans for the use of all convicts physically able on public roads, in public parks, forestry and | Laws of 1912, J. R. No. 5. |

(A) Permitted in:
other ways for
public benefit.

County-board
of Chosen Free-
holders to make
application, stat-
ing number of
prisoners desired.
Prison Labor
Commission, in
connection with
governing body
of institution to
determine num-
ber to be as-
signed, cost of
transportation,
maintenance and
compensation
and may enter
into agreement.
Any moneys law-
fully available
for roads may
be spent in hous-
ing and feeding
such convicts.

NEW MEXICO

Appropriation
of \$5000.00 for
guards and ma-
terials for road
works.

Prisoners to be
so worked when-
ever possible.

County pris-
oners.

No convict to
go out to labor
unguarded, un-
less he be a
trusty.

NEW YORK

Appropriation
of \$10,000 for
construction of
highways by con-
vict labor in vicin-
ity of Clinton and
Great Meadow
prisons.

Not to exceed
300 convicts on
highways.

Convict labor
may be employed
by the conserva-
tion commission
in propagating

(B) Prohibited in:

Laws of
1912,
C. 223.

Laws of
1903,
C. 56.

Laws of
1909,
C. 42.

Laws of
1909,
C. 89.

R. S.
1897,
Sec.
3528.

Laws of
1912,
C. 530.

Laws of
1909,
C. 47,
Sec. 179.

Laws of
1912,
C. 444.

| (A) Permitted in: | | |
|-------------------|--|--|
| | trees and in field planting. | |
| NORTH CAROLINA | Convicts hired to counties or municipalities. | R. S. 1908, Sec. 5411. |
| | County convicts. | R. S. 1908, Sec. 1355. |
| NORTH DAKOTA | All convicts not otherwise employed. | Laws of 1909, C. 133. |
| OHIO | Stone crushing. | Laws of 1911, S. B. 238. |
| OKLAHOMA | State prisoners. | Laws of 1909, C. 32, Sec. 50. |
| | County prisoners. | Laws of 1909, C. 32, Sec. 40. |
| OREGON | County convicts. | R. S. 1910, Sec. 6432-34. |
| | Expense of extra guards for road work to be borne by state board of agriculture. | R. S. 1910, Sec. 4521. |
| PENNSYLVANIA | 10 per cent. of the inmates of any workhouse. | R. S. 1909, p. 5622, Sec. 1. |
| SOUTH CAROLINA | Convicts who are able-bodied are placed on chain-gang unless otherwise provided by special order of the judge. | Const. 1895, Art. 12, Sec. 6. Laws of 1911, No. 110. |
| | County convicts. | R. S. 1902, Title 3, C. 32, Sec. 657. |
| SOUTH DAKOTA | County convicts. If Sheriff can work convicts more profitably outside jail. | R. S. 1907, Title 12, Sec. 745. |

(B) Prohibited in:

| (A) Permitted in: | | (B) Prohibited in: |
|-------------------|--|---|
| TENNESSEE | Counties to construct and maintain portable, movable or stationary work-houses for working prisoners upon the public roads. | Laws of 1907, S. B. 239. |
| TEXAS | Legislatures to make provisions for using convict labor on public roads. County convicts. | Const. 1876, Art. 16, Sec. 24. R. S. 1911, Title 104, C. 3, Sec. 6238. |
| UTAH | County Commissioners to make regulations for state prisoners to work on roads laid out by road commission. County prisoners. | Laws of 1911, C. 76. Laws of 1909, C. 89, Sec. 15. |
| VIRGINIA | All persons convicted of crime and sentenced to hard labor on the public roads, prior to May 1st, 1913, and after that date all persons sentenced to confinement in the Penitentiary and all persons confined in our public jails shall, when delivered to the Superintendent of the Penitentiary, constitute the convict road force. Prisoner convicted of felony prior to May 1st, 1913, may be sentenced to work on public roads. After May 1st, 1913, | Laws of 1912, C. 58. Laws of 1912, C. 59. |

(A) Permitted in:

all male prisoners, except such as Superintendent deems unsafe, because of condition of health, character or disposition, shall be subject to work on public roads.

| | | |
|------------|---|---|
| VERMONT | State prisoners—Supt. may employ as many as 10 state convicts at one time outside prison walls. | R. S. 1906, Title 33, C. 260, Sec. 5996-7. |
| | County convicts. | R. S. 1906, Title 33, C. 262, Sec. 6105. |
| WASHINGTON | County convicts. | R. S. 1910, Sec. 3895. |
| | State convicts. | R. S. 1910, Title 68, C. 4, Sec. 8575. |
| WYOMING | Any convict may work on public highways or streets. | R. S. 1910, C. 418, Sec. 6401. |

(B) Prohibited in:

6. *The State may work him on State Farms for Community Consumption:*

| | | |
|----------|---|-----------------------------------|
| ARKANSAS | Board of Commissioners to purchase or lease and equip a farm or farms to pay for the same out of the labor or products of the labor of the convicts, or they may select any lands of the state and clear and improve and establish a farm on the same of sufficient area to employ all convicts able to work. | R. S. 1904, C. 123, Sec. 5855. |
| FLORIDA | Female, aged, diseased, crippled, deformed, or otherwise unable to perform manual labor to be withheld from lease and employed on farm. | Laws of 1909, No. 72. |
| GEORGIA | Reformatory prisoners. | R. S. 1911, Sec. 1243. |
| | Convicts not engaged in work for municipalities or counties, or convicts considered dangerous and not safe on public works. | R. S. 1911, Sec. 1214. |

| | | |
|--|---|---|
| | Females, aged, diseased and infirm, and boys under fifteen. | R. S. 1911, Sec. 1205. |
| LOUISIANA | Board of Control with approval of Governor to purchase or lease a tract of land to be cultivated by convict labor. | R. S. 1904, Page 1307, Sec. 10. |
| MICHIGAN | Warden has power to employ convicts on farm. | R. S. 1897, Sec. 2110. |
| MISSISSIPPI | Legislature to purchase farms and have convicts work thereon under state supervision. | Const. 1890, Art. 10, Sec. 225. |
| NORTH CAROLINA | Purchase of state farms authorized. | R. S. 1908, C. 107, Sec. 5063. |
| NORTH DAKOTA | | R. S. 1905, Sec. 10368. |
| OREGON | State Board of Agriculture authorized to make requisition for use of convict labor on state fair grounds. | R. S. 1910, Sec. 4521. |
| PENNSYLVANIA | The Board of Inspectors of the Western Penitentiary is empowered to secure one thousand five hundred acres of forest land and take the necessary steps toward the erection of a suitable institution. The able-bodied male convicts are to assist in the improvement of the tract and construction of the building. | R. S. 1911, No. 37. |
| SOUTH DAKOTA | Farming and stone quarrying outside prison walls authorized. | R. S. 1910, Title 12, Sec. 683. |
| TENNESSEE | One member of Board to superintend and manage all farming operations. | Laws of 1897, C. 125, Sec. 11. |
| TEXAS | For county convicts. | R. S. 1911, Vol. 5, Page 1110. |
| UTAH | | R. S. 1910, Title 74, Secs. 2254, 2259. |
| VIRGINIA | Convicts deemed unsafe for road work may be employed by the Penitentiary Board on the state farm. | Laws of 1912, C. 59. |
| WISCONSIN | Warden may employ convicts outside walls in stone quarrying or on farm. | R. S. 1889, C. 201, Sec. 4927. |
| 7. <i>The State may work him in State Factories for Community Consumption:</i> | | |
| ARKANSAS | | R. S. 1904, Sec. 5856. |
| CALIFORNIA | Jute bags and crushing of stone. | Laws of 1911, P. 1, C. 56. |
| DELAWARE | Stone crushing. | R. S. 1893, Page 428, Sec. 14. |
| ILLINOIS | Industries to be assigned to different institutions due regard being paid to location of prison, market, and machinery already installed and number of convicts. | R. S. 1909, C. 108, Secs. 87-90. |
| INDIANA | Surplus articles from Reformatory. | R. S. 1908, Sec. 9921. |
| MICHIGAN | Binder twine. Manufacture of chairs, Detroit House of Correction. | Acts of 1907, No. 211. |
| MINNESOTA | | R. S. 1905, Sec. 5448. |
| MISSOURI | Binder twine. | Laws of 1911, S. B. 23. |

| | | |
|--------------|--|--------------------------------|
| MONTANA | Binder twine; jute bags. | Laws of 1909, H. J. R. 6. |
| NEW MEXICO | | R. S. 1897, Sec. 3548. |
| NORTH DAKOTA | Binder twine. | Laws of 1909, C. 228. |
| | Brick making, manufacture of farm implements authorized. | Laws of 1911, C. 204. |
| TENNESSEE | Mining, one member of Board to superintend all mining operations. | Laws of 1897, C. 125, Sec. 12. |
| VIRGINIA | Convict Lime Board consisting of the Governor, Superintendent of the Penitentiary and Commissioner of Agriculture created to provide for working long-term or desperate convicts in the manufacture of ground lime stone or oyster shells. Board may acquire by gift, purchase or lease suitable lime-stone quarries and suitable deposits of oyster shells convenient to transportation by rail or water. Board to see that competent and reliable men are placed in charge of the machinery. Whenever possible convicts to be used for all the work of the plants. No one purchaser to secure more than one car load during any one year, if there are other applications therefore. Product not to be sold to purchaser except for his own use. | Laws of 1912, C. 295. |
| WASHINGTON | As many convicts as possible to be employed in the manufacture of jute. | R. S. 1910, Sec. 8555. |
| WISCONSIN | Binder twine. | Laws of 1911, C. 377. |

8. *The State may work him Under Specific Limitations:*

The unfair competition of prison goods with the products of free labor before the introduction of state production for state consumption resulted in the introduction of methods which should in part lessen the injurious competition.

Competition with Free Labor prohibited in:

| | | |
|-----------|---|----------------------------------|
| COLORADO | Convicts shall not be used in building bridges or similar structures which require the employment of free labor. | R. S. 1908, C. 108, Sec. 4880. |
| GEORGIA | | R. S. 1911, Sec. 1212. |
| ILLINOIS | | R. S. 1909, C. 108, Sec. 77. |
| TENNESSEE | Industries to compete as little as possible with free labor. | Laws of 1909, H. B. 789. |
| UTAH | Diversified lines of industry to be selected so as to interfere as little as possible with industries of the State. | R. S. 1910, Title 74, Sec. 2257. |

The limitation of output in lines affected was the prevailing

remedy, based on the theory that where the quantity was small the debasing effect of the goods on the market would be small. As the limitation upon the quantity of output was difficult to legislate upon and in a field in which the union men were not versed, the limitation was placed upon the number of convicts that could be employed on any one commodity and the restriction upon the use of machinery.

Number of Convicts in One Industry Limited:

| | | |
|---------------|--|--------------------------------------|
| MASSACHUSETTS | Not more than 30 per cent of the convicts may be employed in any industry except cane-seating and umbrella making. | R. S. 1902, C. 225, Sec. 48. |
| | Brushes not more than 80 men; chairs with wood frames not more than 80 men; clothing other than shirts or hosiery not more than 375 men; harness not more than 50 men; mats not more than 20 men; rattan chairs not more than 75 men; rush chairs not more than 75 men; shirts not more than 80 women; shoes not more than 375 men; shoe heels not more than 125 men; stone cutting not more than 150 men; laundry work not more than 100 men. | R. S. 1902, C. 225, Sec. 47. |
| MINNESOTA | Number of convicts in any one industry not to exceed 10 per cent of total number of persons engaged in such industry in the state, unless needed to produce articles for State or Charitable institutions. Number in each industry to be determined by a commission consisting of the State Labor Commissioner, a member of the Board of Control and a citizen not connected with the prison, the last two appointed by the Governor. | R. S. 1905, C. 105, Sec. 5449. |
| | This provision does not apply to the number of prisoners employed in manufacture of binder twine, binder, mowers, and rakes at Stillwater, nor to number manufacturing brushes at Cloud, nor to number hereafter employed at Stillwater in any industry not now carried on in the State. | R. S. 1909, C. 105, Sec. 5449. |
| PENNSYLVANIA | Not more than 5 per cent of inmates to manufacture brooms and hollowware nor 10 per cent other goods. | R. S. 1903, Page 3488, Sec. 26. |
| OHIO | Total number employed in the manufacture of any one kind of goods manufactured elsewhere in the State not to exceed 10 per cent of the number of persons in the State outside the Penitentiary employed in such manufacture. | R. S. 1910, Div. 4, C. 3, Sec. 2244. |

The Use of Machinery is forbidden in:

| | | |
|---------------------------|---|---------------------------------|
| ILLINOIS | No more motive power or machinery other than hand or foot than is absolutely necessary. | R. S. 1909, C. 108, Sec. 80. |
| INDIANA | All work done under State account to be hand work if possible. | R. S. 1908, C. 124, Sec. 9850. |
| PENNSYLVANIA ¹ | | R. S. 1902, Page 3489, Sec. 28. |

Similar prohibitions are found for the manufacture of any goods which would compete with any goods manufactured in the state in which the prison was located.

The manufacture of goods manufactured by free industries in the State is prohibited as follows:

| | | |
|----------|--|---|
| IDAHO | No contract shall be let to perform any labor which shall conflict with any existing manufacturing industries of the state. | R. S. 1908, Part 3, Title 1, C. 1, Sec. 8461. |
| MICHIGAN | No mechanical trades shall hereafter be taught the convicts in the state prisons of this state except the manufacture of those articles of which the chief supply for home consumption is imported from other states or countries. | Const. 1850, Art. 18, Sec. 3. |
| UTAH | Board to select diversified industries with reference to interfering as little as possible with the same lines of industry carried on by citizens of the state. | R. S. 1907, Title 74, C. 10, Sec. 2257. |

The branding of prison goods, or the use of a prohibitory license have been the subject of statutes in many states, though held unconstitutional pending the action of Congress.²

The Branding of convict-made goods and licensing the sale of convict-made goods is permitted in:

| | | |
|------------|--|--------------------------------------|
| CALIFORNIA | Each and every article manufactured under the provisions of this act shall have plainly marked or stamped thereon either the words "San Quentin Prison" or the words "Folsom Prison", according as such article may be manufactured at one or other of said prisons. | Laws of 1911, Page 72, Art. 8. |
| COLORADO | No convict-made goods shall be sold without a license from the Secretary of State. This license is to be conspicuously posted in the dealer's place of business. License fee is \$500. License must be renewed every year. Goods are to be plainly marked and | R. S. 1908, C. 29, Art. 2, Sec. 835. |

¹ *Kempf vs. Francis*, No. 9, Oct. Term, 1912. Filed Jan. 6, 1913.

² 157 N. Y., 1. "Hawkins' Case."

| | | |
|------------|---|--------------------------------------|
| | branded "convict made". Bond of \$5,000 must be furnished for the faithful observance of the law. | |
| INDIANA | Requirements as to license, bond, fee, etc., same as in Colorado. All convict-made clothing must have linen label sewed on each article in a conspicuous place. | Acts of 1901, P. 618. |
| LOUISIANA | It shall be unlawful for any corporation, merchant or other person, in the State of Louisiana, to deal in or sell brooms, made in the different state penitentiaries, by convicts or other persons confined therein, unless each broom is stamped or labeled "convict-made"; said label or stamp to be not less than four inches long, two and a half inches wide, and the letters thereof not less than one inch in size. Any corporation, merchant or other person violating the provisions of this act shall, on conviction thereof, be fined not less than fifty dollars, or be imprisoned in the parish jail, for not less than thirty days, for each offense, at the discretion of the court. | R. S. 1904, Page 433. |
| KENTUCKY | All goods made in prison outside of the state, must be plainly marked "convict made". Penalty for removal of mark—year's imprisonment and fine of \$500. No one shall have convict-made goods in his possession for the purpose of sale that are not so marked. | R. S. 1909, C. 30, Secs. 524-526. |
| MAINE | All articles and goods manufactured at the prison for sale shall be distinctly labeled or branded with these words, "Manufactured at the Maine State Prison." | R. S. 1903, C. 141, Sec. 32. |
| NEW JERSEY | All goods made in whole or in part within the state prison and intended for sale to be plainly marked "Manufactured in the New Jersey state prison," or if impractical to mark article, package or box in which goods are contained to be plainly marked. | R. S. 1910, Page 4916. |
| NEW YORK | No one shall offer for sale or sell or have in his possession for the purpose of sale, any convict-made goods without a license from the State Comptroller. This license renewable every year. Fee \$500. Application for license to be accompanied by bond of \$5,000 for the faithful observance of the law. Requirements as to marking goods same as in Colorado. Penalty for violation, fine of not less than \$100 nor more than \$1,000, or imprisonment not less than ten days, or by both fine and imprisonment. | Penal Law 1909, Art. 60. |
| OHIO | Goods manufactured in this or any other state to be branded "convict | R. S. 1910, C. 16, Secs. 6213, 6218. |

made". Such brand to be placed outside of and upon the most conspicuous part of the finished article and its box, crate, or covering. When the Commissioner of Labor has reason to believe this statute has been violated he shall notify the Attorney-General who shall institute proceedings.

OKLAHOMA

Any article manufactured by convicts in any prison or penitentiary of any state of the U. S., or in any federal prison or penitentiary, before being sold or offered for sale shall bear a label to be placed on the outside of the most conspicuous part of the article. Any person found guilty of violating this act shall be fined not less than \$100 or more than \$500.00.

Laws of 1910, H.
B. No. 21.

OREGON

All goods made in any penitentiary, prison, or reformatory shall be plainly branded "convict made", followed by year and name of the penitentiary in plain English lettering. If it is impractical to brand articles label shall be placed on the box or other covering. Any person violating this act shall be sentenced to pay a fine of not exceeding \$1,000.

R. S. 1911, H. B.
82.

PENNSYLVANIA

All goods, wares, etc., manufactured in any prison, etc., whether for the direct benefit and maintenance of such institution or under contract made by the authorities with any third party shall be placed on the package or other covering; mark always to be placed upon the most conspicuous part of the article or box. Goods shipped to points outside the state shall not be so branded. Fine not exceeding \$1,000 or imprisonment for one year. Any person offering such goods for sale without license shall be subject to a fine not exceeding \$500 or imprisonment for 6 months.

R. S. 1903, P.
3488, Secs. 22-
25.

WISCONSIN

All goods manufactured in a prison, etc., in any state except this state, shall be branded "convict made". If impractical to brand articles, packages or boxes in which they are contained, must be clearly marked. It is the duty of the Commissioner of Labor and the District Attorneys to enforce this law.

R. S. 1898, C.
202, Sec. 4960.

Special interests have attempted to secure statutes prohibiting the prison manufacture of the special commodities from the sale of which they secured a livelihood.

The Manufacture of Certain Articles is prohibited in:

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| CONNECTICUT | Tobacco or any article which in its use comes into contact with the mouth of human being. | R. S. 1902, Sec. 2902. |
| INDIANA | Manufacture of school desks, printing of school books or any books except for use in institution, at Reformatory. | R. S. 1908, C. 124, Sec. 9920. |
| MAINE | Wagons, sleighs and carriages except infants' carriages. | R. S. 1903, C. 141, Sec. 31. |
| MARYLAND | Tin cans for oyster and fruit packing purposes, or iron stoves for heating or cooking purposes, or iron castings for machinery purposes. | R. S. 1904, Art. 27, Sec. 565. |
| MASSACHUSETTS | Engraving. | R. S. 1902, C. 225, Sec. 26. |
| NEW YORK | Printing and photo engraving. | R. S. 1909, C. 47, Sec. 176. |

The unhealthful conditions prevailing in certain prison workshops has resulted in special provisions prohibiting dangerous trades.

Work Injurious to Health or Dangerous to Person of Convict is prohibited in:

| | |
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| KANSAS | R. S. 1909, C. 108, Sec. 8595. |
| KENTUCKY | R. S. 1909, C. 97, Art. 1, Sec. 17. |
| SOUTH DAKOTA | R. S. 1910, Title 12, Sec. 696. |

The introduction of free laborers into the prison workshops during the hours of labor so as to supplement the labor of prisoners and aid in the development of state workshops for the production of commodities for sale in the open market has been prohibited by statute.¹

Association with Free Laborers during Work Hours is prohibited in:

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| KENTUCKY | R. S. 1909, Sec. 3809. |
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The avoidance of expense is sought by means of a statute.

Labor which can be carried on without expense to county and is consistent with safe-keeping of prisoner is permitted in:

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| NEW HAMPSHIRE | R. S. 1901, C. 282, Sec. 14. |
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His hours of labor are limited. The desire to restrict the quantity of the goods he may produce has prevented his over-exertion, while militating against his efficiency.

¹ See, Whitin, Penal Servitude, pp. 67-69.

Hours fixed at six per day:

| | | |
|------------|---|------------------------|
| NEVADA | County convicts; when weather permits. | R. S. 1912, Sec. 7619. |
| NEW MEXICO | County prisoners; between 9 and 4 p. m. | Laws of 1909, C. 89. |

Hours fixed at eight per day:

| | | |
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| COLORADO | Misdemeanants. | Laws of 1911, C. 130. |
| DELAWARE | Between 8 a. m. and 5 p. m. | R. S. 1893, Page 426, Sec. 5. |
| FLORIDA | Not less than 8 or more than 10. | R. S. 1906, Art. 6, Sec. 4138. |
| IDAHO | County prisoners. | R. S. 1901, Sec. 8542. |
| MINNESOTA | No convict to labor more than 8 hours per day at stone work. | R. S. 1905, C. 105, Sec. 5458. |
| NEW YORK | | Prison Law 1909, Art. 171. |
| PENNSYLVANIA | County prisoners. | R. S. 1909, Page 5622, Sec. 1. |
| UTAH | | R. S. 1907, Sec. 2263. |
| WISCONSIN | | Laws of 1909, C. 333. |

Hours fixed at nine per day:

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| NEW JERSEY | | Laws of 1911, S. B. 150. |
| WEST VIRGINIA | | R. S. 1903, Sec. 4672. |

Hours fixed at ten per day:

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| ARKANSAS | | R. S. 1904, Sec. 5899. |
| KANSAS | | R. S. 1909, Sec. 8595. |
| LOUISIANA | County convicts; not to begin before 6 a. m. | R. S. 1904, Page 1313, Sec. 4. |
| MARYLAND | | Laws of 1906, C. 36. |
| MICHIGAN | | R. S. 1897, C. 75, Sec. 38. |
| MINNESOTA | Male prisoners over 16 and under 50 to labor not more than 10 hours per day. | R. S. 1905, C. 106, Sec. 5468. |
| MISSOURI | Eight hours per day from Oct. 15 to April 15; ten hours per day from April 15 to October 15. | R. S. 1909, Sec. 1657. |
| NORTH DAKOTA | | Laws of 1909, C. 228. |
| OREGON | | R. S. 1910, Sec. 4518. |
| TENNESSEE | | R. S. 1896, Title 7, Art. 2, Sec. 7512. |

Hours determined by various provisions:

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| SOUTH DAKOTA | Constant employment for benefit of state. | R. S. 1910, Title 12, C. 1, Sec. 674. |
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Hours to be determined by discretion of Prison Board:

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| ARIZONA | | R. S. 1901, Title 56, C. 2, Sec. 3589. |
| CALIFORNIA | | Penal Code 1909, Sec. 1586. |
| CONNECTICUT | | R. S. 1902, Title 17, C. 176, Sec. 2899. |
| DISTRICT OF COLUMBIA | Supreme Court to make rules. | R. S. 1911, C. 35, Sec. 1196. |
| GEORGIA | | R. S. 1911, Sec. 1199. |
| KENTUCKY | | R. S. 1909, Sec. 3812. |
| MAINE | | Laws of 1903, C. 141, Sec. 4. |
| MISSISSIPPI | | R. S. 1906, C. 107, Sec. 3592. |
| MONTANA | | R. S. 1907, Sec. 9717. |
| NEBRASKA | | R. S. 1911, C. 51, Secs. 2743-4. |
| NEVADA | State prisoners. | R. S. 1912, Sec. 7569. |
| NEW HAMPSHIRE | Discretion of governor and council. | R. S. 1901, C. 285, Sec. 5. |
| NEW MEXICO | State prisoners. | R. S. 1899, Sec. 3491. |
| NORTH CAROLINA | | R. S. 1908, C. 116, Sec. 5391. |
| OHIO | | R. S. 1910, Div. 4, C. 2, Sec. 2159. |
| OKLAHOMA | | Acts of 1908, H. B. 715. |
| RHODE ISLAND | | R. S. 1909, Title 38, C. 360, Sec. 2. |
| VERMONT | | R. S. 1906, Sec. 5990. |
| WASHINGTON | | R. S. 1910, Title 68, Sec. 8521. |

V

HOW IS HE MAINTAINED?

Supplied with a bunk, the prisoner is required to keep it according to certain regulations and is protected in the use of it by regulations.

I. Bunking.

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| ALABAMA | White and colored prisoners to be housed separately. Fine of \$100 for jailer who houses them together if there is sufficient accommodation to do otherwise. | R. S. 1907, C. 192, Sec. 6619. |
| ARKANSAS | Separation of white and colored prisoners, male and female. Separate cells for all convicts at night. | R. S. 1904, C. 123, Secs. 5900-5901. |
| CALIFORNIA | Beds of straw; sufficient number of blankets. County—Some suitable woman to have charge of women prisoners; they must not see or be seen by or converse with male prisoners; guard may not search women prisoner or enter her cell except in presence of matron. | Penal Code 1909, Sec. 1587. Penal Code 1911, Title 2, Part 3, Sec. 1616. |
| COLORADO | County — Sheriff responsible for cleanliness of jails; prisoners under civil process to be kept separate from those under criminal process. Separation of sexes. | R. S. 1908, C. 74, Secs. 3585-7. |
| CONNECTICUT | Warden to make regulations. County—Prisoners on civil process not to be lodged in same rooms as those held on criminal process. County to provide suitable bedding and fuel. | R. S. 1902, Sec. 2901. R. S. 1902, Secs. 2945 & 2929. |
| DELAWARE | Sheriff paid as much per day as Levy Court decides for bedding, etc. Separation of males and females and young prisoners from hardened offenders. | R. S. 1893, C. 54, Sec. 3. Laws of 1898, C. 247. |
| DISTRICT OF COLUMBIA | All regulations to be made by Supreme Court. | R. S. 1911, C. 35, Sec. 1196. |
| FLORIDA | Allowance of bedding the same as fixed by the U. S. army regulations. Separation of white and negro convicts at all times when not at work. Separation of sexes and races on farm. | R. S. 1906, Art. 6, Sec. 4132. Sec. 4142. R. S. 1906, Sec. 4117. |
| GEORGIA | Separation of races and sexes and first offenders from hardened criminals. | R. S. 1911, Vol. 2, Sec. 1203. |

IDAHO

Total supplies for institution, including salaries of officers and all other expenses connected therewith, not to exceed 85c. per day per prisoner.

Separate cells for all prisoners whenever possible.

County—All jails to contain a sufficient number of cells to allow prisoners belonging to the following classes to be separated: Civil from criminal; persons convicted from those detained as witnesses; male from female.

State—Female convicts to be sent to some other state where there is a woman's prison.

State—Commissioners to make all regulations.

County—Debtors and witnesses not to be confined in same room as persons committed to crime.

Separation of males and females and young prisoners from hardened offenders. Keepers to furnish prisoners with sufficient clean water daily to provide for personal cleanliness.

Jail to be kept in a healthful condition and whitewashed with lime at least once every three months; rooms wherein prisoners are confined to be whitewashed once a month between May and November. Keeper to see constant attention is paid to cleanliness of prisoners.

Clean straw beds, sufficient coverings for comfort of prisoners. Separation of young prisoners from hardened offenders and of males and females.

Keeper responsible that jail is kept in a healthy, cleanly condition and for personal cleanliness of the prisoners. Each prisoner to be furnished daily with sufficient clean water for drink and personal use and with a clean towel once a week.

Separate apartments for females in all jails.

Young prisoners to be separated from hardened offenders.

State—Separate rooms for sexes.

County—Sheriff to supply fuel; juvenile prisoners to be separated when possible.

Prison commission to make rules necessary for the preservation of the convict's health and general sanitary arrangements of the Penitentiary.

Warden at regular intervals to cause all cells to be thoroughly cleaned and aired; to see that sufficient clean, com-

R. S. 1908, Sec. 8468.

R. S. 1908, Sec. 8494.

R. S. 1908, Sec. 8526.

R. S. 1908, Sec. 8515.

R. S. 1909, C. 108, Sec. 13.

R. S. 1909, C. 75, Secs. 11-16.

Secs. 20 & 22.

R. S. 1908, C. 124, Secs. 9863 & 9814.

R. S. 1897, Title 26, Sec. 5640.

Sec. 5639.

Sec. 5638.

R. S. 1909, C. 60, Sec. 4559.
Sec. 4575.

R. S. 1909, Sec. 3812.

Sec. 3797.

ILLINOIS

INDIANA

IOWA

KANSAS

KENTUCKY

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| | <p>fortable bedding is provided for each convict; cells and bedding to be thoroughly inspected at least once a week.</p> <p>County—Jails to be kept clean and free from nauseous odors; to be kept comfortably warm. Each prisoner to have sufficient bed clothing to be paid for out of county levy.</p> | R. S. 1909, C. 73, Sec. 2236. |
| LOUISIANA | <p>Separation of male and female, blacks and whites at Penitentiary.</p> <p>Police jury to make regulations for convicts working under its supervision.</p> | Acts of 1900, No. 70, Sec. 6. R. S. 1908, Page 623, Sec. 7. |
| MAINE | <p>Sheriff responsible for cleanliness of jail; walls to be whitewashed annually and attention paid to cleanliness of prisoners.</p> <p>Inspectors to make recommendations to county commissioners as to improvement in sanitary conditions, heating, lighting, etc., of jail.</p> | R. S. 1903, C. 82, Sec. 38. |
| MARYLAND | <p>Separation of sexes; walls to be whitewashed at least three times a year; warden to take proper measures for the health and cleanliness of the prisoners and to see convicts pay proper attention to their person.</p> | Laws of 1909, C. 126. |
| MASSACHUSETTS | <p>All penal institutions to be well ventilated, beds of good quality and sufficient covering for comfort of prisoners, to include mattress, blankets and pillows; strict attention to be paid to cleanliness; clean towels weekly; clothes not to be washed at night or hung wet in room occupied by prisoner.</p> | R. S. 1904, Art. 27, Secs. 595-6 & 630. |
| MICHIGAN | <p>Bedding to be plain but of good quality and sufficient quantity for comfort of convict.</p> <p>Fuel and comfortable bedding to be provided for county convicts by supervisors.</p> | R. S. 1902, C. 225, Sec. 30. |
| MINNESOTA | <p>Bedding of coarse material; separate cells for all prisoners whenever possible.</p> <p>County—Separation of males and females, youthful prisoners from hardened criminals, insane from other prisoners; as far as possible each prisoner to have a separate cell; sheriff to see jail is kept clean.</p> | R. S. 1897, C. 76, Sec. 25. R. S. 1897, C. 86, Sec. 6. |
| MISSISSIPPI | <p>Separation of races and sexes.</p> <p>County—Separation of sexes.</p> <p>Board of supervisors to establish rules for housing of county convicts.</p> | R. S. 1905, C. 105, Secs. 5435, 5439. R. S. 1905, C. 106, Sec. 5475. |
| MISSOURI | <p>Bedding of coarse material.</p> <p>County—Civil and criminal cases to be kept separate, also females and males. Grand jury to visit jail monthly and examine conditions thereof.</p> | R. S. 1906, C. 107, Sec. 3625. R. S. 1906, C. 22, Sec. 874. Sec. 843. R. S. 1909, Art. 19, Sec. 1637. R. S. 1909, Art. 18, Secs. 1576 & 1583. |

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| MONTANA | County jails to contain sufficient cells to permit separate confinement of persons committed for civil or criminal causes; males from females and persons held under sentence from those held as witnesses. Board of Commissioners to make rules in regard to management of Penitentiary. | R. S. 1907, Part 3, Title 2, Sec. 9760. R. S. 1907, Part 3, Title 1, Sec. 9717. |
| NEBRASKA | Bedding of coarse material; when there are sufficient cells convicts to be confined separately. County—Judges of district courts to make rules as to cleanliness of jails and prisoners, beds, heating, lighting and ventilating of jail. | R. S. 1911, Secs. 10179, 10180. Sec. 10137. |
| NEW HAMPSHIRE | Jailers to provide bedding, etc. Governor to establish rules for health and comfort of prisoners. | R. S. 1901, C. 282, Sec. 4. C. 285, Sec. 5. |
| NEW MEXICO | Board of commissioners to make regulations for Penitentiary. County commissioners to visit jails at least twice a year and carefully examine as to cleanliness, etc. Sheriff to keep jails clean and healthy and observe special care as to habits of cleanliness among the prisoners. | R. S. 1897, Sec. 3498. R. S. 1897, Title 7, C. 9, Secs. 823-827. |
| NEW JERSEY | Each convict to have a separate cell. County—Female prisoners to be removed as far possible from male; female guards to watch such prisoners day and night. | R. S. 1910, Page 4912, Sec. 7. Laws of 1911, C. 137. |
| NEW YORK | Separate cells for all prisoners. County—Civil and criminal prisoners to be housed separately; also male and female. | R. S. 1909, C. 27, Sec. 151. R. S. 1909, C. 47, Art. 13, Secs. 345-6. |
| NORTH CAROLINA | State—Directors to make all arrangements for sanitary condition of Penitentiary. County—Jails must have at least 5 separate and suitable compartments, one for white male criminals, one for white female, one for colored males, one for colored females, one for other prisoners. Cells to be so heated as to be warm and comfortable; bedding to be furnished, including good warm blankets. Sheriff or keeper to daily cleanse all occupied rooms in cell house. | R. S. 1908, C. 116, Sec. 5390. R. S. 1908, C. 24, Secs. 1336-7-8 & 1343. |
| NORTH DAKOTA | County commissioners to examine at least yearly as to health and cleanliness of prisoners. Keeper to see jail is constantly kept in a clean and healthful condition and that strict attention is paid to personal cleanliness of all prisoners; each prisoner to be furnished with clean water daily and one clean towel per week. | R. S. 1905, C. 19, Secs. 10434-8. |

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| | State—Males and females to be housed separately; separate cells for all prisoners at night. | R. S. 1905, Code of Criminal Procedure, C. 17, Sec. 10360. |
| OHIO | Board of managers make all arrangements. | R. S. 1910, Div. 4, C. 2, Sec. 2159. |
| | County—Sheriff to examine the condition of each prisoner at least once a month. Cells to be whitewashed at least three times a year. | R. S. 1910, C. 14, Sec. 3160. |
| | Court of common pleas to regulate cleanliness of prison and prisoners, warming, lighting and ventilating of jail. | R. S. 1910, C. 4, Sec. 3162. |
| OKLAHOMA | Separate cells for prisoners. | Sec. 3168. |
| | State—Regulations to be made by board of control. | Laws of 1908, C. 22. |
| | County—Courts to make rules for cleanliness of prisoners, classification as to sex, age, crime, etc.; also as to beds and warming, lighting and ventilating of jail; county commissioners to inspect at least once a week and to examine in regard to cleanliness. Jailer to keep jail clean and to be responsible for cleanliness of prisoners; prisoner to have all necessary clean water and a clean towel weekly. | R. S. 1903, Secs. 5750 & 5719. |
| OREGON | All jails not previously standing to be built of brick or stone, floor of cement, ceiling of plaster, iron or steel, roof of metal, slate or non-combustible material, doors of iron or steel, windows of glass with no more wood than is necessary; whole structure as nearly fire-proof as possible. | R. S. 1910, C. 14, Sec. 4527. |
| | Male and female prisoners to be kept separate. | Sec. 4533. |
| | In every county of 100,000 a discreet, capable matron shall have charge of women prisoners. | Secs. 4535-6. |
| PENNSYLVANIA | State—A sufficient number of cells to provide for solitary housing of prisoners. | R. S. 1903, Page 3485, Art. 1. |
| | County—Keepers responsible for sanitary arrangement. | R. S. 1903, Page 2010, Sec. 1. |
| RHODE ISLAND | Warden to see convicts are cleanly as to their persons. | R. S. 1909, C. 360, Secs. 23 & 38. |
| | Jailer to supply all necessities and to be allowed the amount fixed by law for support of prisoners. | C. 358, Sec. 4. |
| SOUTH CAROLINA | Lodging to be carefully provided for in all contracts. | R. S. 1902, Title 2, C. 33, Sec. 684. |
| | County commissioners to furnish blanket and such other bedding as shall be necessary for persons confined in jail; criminal prisoners to be provided with at least 2 blankets in winter. | R. S. 1902, Title 2, C. 32, Sec. 652. |

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| SOUTH DAKOTA | <p>State—Prisons to be kept clean; personal cleanliness of convicts to be enforced; prisoners to have all clean water necessary; clean towel once a week.</p> <p>Convicts to be confined in separate cells at night and in day time intercourse between them to be prevented as far as possible; all communications between male and female convicts to be prevented.</p> <p>County—Judges of circuit court to make regulations for cleanliness of jails, separation of sexes, etc., and for warming, lighting and ventilating jails.</p> | R. S. 1910, Title 12, Sec. 740. |
| | | Sec. 674. |
| TENNESSEE | <p>Chairman of board to make regulations for housing.</p> <p>Young and old prisoners, males and females, white and colored to be separated; separate cells for all convicts at night.</p> <p>County—Jailer to keep jail clean and to remove all filth from cells once in every 24 hours; sexes to be separated.</p> | R. S. 1910, C. 4, Sec. 720. |
| | | R. S. 1896, Sec. 7469. R. S. 1897, Title 7, Art. 4. Secs. 7520-1. |
| TEXAS | <p>Separation of sexes and races.</p> <p>County—Commissioners to see jails are clean and well ventilated and not overcrowded and beds comfortable for prisoners.</p> | Secs. 7484, 7522-7527. |
| | | R. S. 1911, Secs. 6209-6211. R. S. 1911, Secs. 5108-5110. |
| UTAH | <p>Whenever there is a sufficient number of cells prisoners shall be kept separate at night and when unemployed.</p> <p>County—Separation of male and female prisoners, also criminal from civil prisoners. Women to be under care of suitable matron.</p> | R. S. 1907, Sec. 2265. |
| | | R. S. 1907, Title 15, C. 7, Sec. 577. |
| VERMONT | <p>Prisons to be arranged for complete separation of sexes.</p> <p>County—children under 16 to be separated from hardened criminals.</p> | R. S. 1906, Sec. 6082. |
| | | R. S. 1906, Title 33, C. 262, Sec. 6116. |
| VIRGINIA | <p>State—All cells to be whitewashed twice a year by convicts, and floors to be washed as often as necessary.</p> <p>County—Jails to be whitewashed at least twice a year, properly aired, and always clean. Prisoners to have proper beds and bedding. Jails to be warmed in winter.</p> | R. S. 1904, Title 55, Sec. 4125. |
| | | R. S. 1904, C. 42, Sec. 928. |
| WASHINGTON | <p>Beds of straw, or other suitable material. Sufficient covering of blankets.</p> <p>County—Superior judges to make rules as to cleanliness of jails, classification of prisoners in regard to sex, beds, warming, lighting and ventilation.</p> | R. S. 1910, Title 68, C. 2, Sec. 8520. |
| | | R. S. 1910, C. 1, Sec. 8495. |
| WEST VIRGINIA | <p>State—Board to make regulations.</p> <p>County—Separate apartments for prisoners; every apartment to be kept comfortable.</p> | R. S. 1906, C. 163, Sec. 4638. |
| | | R. S. 1906, C. 39, Sec. 1212. |

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| | Jails to be whitewashed twice per year; bedding to be kept clean, and apartments warm. | R. S. 1906, C. 39, Sec. 1342. |
| WISCONSIN | County—Jails to be kept in a clean and healthy condition; attention to be paid to personal cleanliness of prisoners; clean water daily; clean towel weekly; criminal and civil prisoners to be separated; also separation of sexes. | R. S. 1889, Title 34, C. 202, Secs. 4950, 4952. |
| 2. Food is supplied according to varying standards: | | |
| ALABAMA | Sufficient good, wholesome food for county convicts. | R. S. 1907, C. 192, Sec. 6609. |
| | State—Sound and wholesome food. | R. S. 1901, Sec. 6538. |
| ARIZONA | County—Sheriff allowed reasonable compensation for board of prisoners. | R. S. 1901, Title 15, Sec. 1194. |
| ARKANSAS | State—Sufficient wholesome food. | R. S. 1904, Sec. 5920. |
| | County—Sheriff to provide needy prisoners with food sufficient for their support. | R. S. 1904, C. 91, Sec. 4402. |
| CALIFORNIA | State—Sufficient plain, wholesome food as to conduce to health of prisoners. | Penal Code 1909, Part 3, Title 1, Sec. 1587. |
| | County—Sheriff to provide necessary food for which he shall be allowed reasonable compensation to be determined by board of supervisors. | R. S. 1909, Part 3, Title 2, Sec. 1611. |
| | County—Keeper to supply food at his own expense; board of commissioners to allow him reasonable amount per day for dieting prisoners. | R. S. 1909, C. 74, Sec. 3585. |
| CONNECTICUT | Warden to arrange food. | R. S. 1902, Sec. 2901. |
| | County—Prisoners permitted to provide their own supplies provided consent of sheriff is obtained. | R. S. 1902, Sec. 2930. |
| DELAWARE | Sheriff paid by prisoner as much per day as Levy Court determines; prisoner detained until payment of board which shall be added to other costs. All prisoners except convicts to procure their food at their own cost and to send for same. | R. S. 1893, C. 54, Sec. 3. |
| DISTRICT OF COLUMBIA | Attorney-general to pay for subsistence of prisoners such sum as it actually costs to subsist them. | R. S. 1911, C. 35, Sec. 1204. |
| FLORIDA | Allowance of food the same as standard fixed by U. S. Army regulations. Leases to provide suitable food according to directions of board of commissioners. | R. S. 1906, Art. 6, Secs. 4132, 4150. |
| GEORGIA | Prison commissioners to regulate food. | R. S. 1911, Vol. 2, Sec. 1199. |
| IDAHO | Sufficient quantity of substantial, wholesome food. | R. S. 1908, Sec. 8405. |
| | County—Sheriff to supply necessary food for which he shall be allowed reasonable compensation by county. | R. S. 1908, Part 3, Title 3, Sec. 8539. |

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| ILLINOIS | State commissioners to make regulations in regard to food. | R. S. 1909, C. 108, Sec. 13. |
| | County—Keeper to furnish sufficient well-cooked food three times a day. | R. S. 1909, C. 75, Sec. 16. |
| INDIANA | Coarse, wholesome food, not less than three-quarters of a pound of meat, and sufficient vegetables to conduce to health. | R. S. 1908, C. 124, Sec. 9863. |
| | County—Sheriff to provide meat and drink for jail prisoners unless they are able to supply themselves. | R. S. 1908, C. 124, Sec. 9814. |
| IOWA | Nine dollars per month allowed for support of each convict at Fort Madison, and \$9.50 at Anamosa. | R. S. 1897, Title 26, C. 2, Sec. 5718. |
| | County—Jail prisoners to be served daily with three well-cooked meals. | R. S. 1897, Title 36, Sec. 5640. |
| KANSAS | State—Board of Directors to make regulations. | R. S. 1909, C. 108, Sec. 8563. |
| | County—Sheriff to supply proper bread, meat and drink. | R. S. 1909, C. 60, Sec. 4559. |
| KENTUCKY | Prison Commission to make regulations for food. | R. S. 1909, Sec. 3812. |
| | County—Keeper of jail to receive 75 cents per day per person for keeping and dieting. | Laws of 1910, C. 96. |
| LOUISIANA | Food and rations not to be less than those prescribed by U. S. Army regulations for soldiers. | R. S. 1904, Sec. 2866. |
| | Police juries to regulate fees of sheriffs for keeping prisoners. Compensation not to be less than 25 cents per diem per prisoner, or more than 50 cents per diem. | R. S. 1904, Page 1767, Sec. 1. |
| MAINE | Inspectors to make regulations in regard to food. | R. S. 1903, Title 12, C. 141, Sec. 11. |
| | County—Prisoners to be supplied with food; all expenses over earnings from labor to be met by county. | R. S. 1903, Title 12, C. 82, Secs. 43, 44. |
| MARYLAND | Three meals a day consisting in all of one and one-quarter pounds flour, three-quarters of a pound of beef or half a pound of bacon of good, coarse quality, one herring, one gill of molasses, one pint of potatoes or vegetables with soup, rye-coffee, tea and salt. | R. S. 1904, Art. 27, Sec. 597. |
| MASSACHUSETTS | Three meals a day of wholesome food. | R. S. 1902, C. 225, Sec. 30. |
| MICHIGAN | Food plain but of good quality and sufficient quantity for sustenance and comfort of convicts. | R. S. 1897, C. 75, Sec. 25. |
| | Board of Supervisors to provide food for county convicts. | R. S. 1897, C. 86, Sec. 8. |
| MINNESOTA | Sufficient quantity of substantial, wholesome food. | R. S. 1905, C. 105, Sec. 5435. |
| | County—Sheriff to be paid for board of prisoners, the sum averaging from 71 to 120 cents per prisoner per day; 3 meals per day of sufficient well-cooked food; meat once a day but no butter or other luxuries except on Sunday. | R. S. 1905, C. 106, Secs. 5473-6. |

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| MISSISSIPPI | Coarse, wholesome, well-cooked food; vegetables in season. County—Board of supervisors to make regulations. | R. S. 1906, C. 107, Sec. 3640. R. S. 1906, C. 22, Sec. 843. |
| MISSOURI | Board to make regulations; prisoners to have nothing more except under physician's orders. County—Prisoners, except those convicted of felony to send for their own food and drink. | R. S. 1909, Art. 19, Sec. 1637. R. S. 1909, Art. 18, Sec. 1582. |
| MONTANA | Board of commissioners to make regulations. County—Sheriff to provide food for which he shall be allowed reasonable compensation. | R. S. 1907, Part 3, Title 1, Sec. 9717. R. S. 1907, Part 3, Title 2, Sec. 9773. |
| NEBRASKA | Substantial, wholesome food. County—Sheriffs to receive 70 cents per day per prisoner from which to provide food and other necessities. | R. S. 1911, Sec. 10180. R. S. 1911, Sec. 10147. |
| NEW HAMPSHIRE | Governor to provide for purchase of supplies. County—Jailer to provide food for which county commissioners shall allow him reasonable compensation. | R. S. 1901, C. 285, Sec. 5. R. S. 1901, Title 35, C. 282, Sec. 4. |
| NEW MEXICO | For each one hundred rations per day is allowed: 60 lbs. bacon, or 150 lbs. of fresh meat, 112 lbs. flour, 30 lbs. beans or 15 lbs. rice, 10 lbs. coffee or 2 lbs. tea, 15 lbs. sugar or molasses, 4 qts. vinegar, 4 lbs. salt, 8 lbs. soap, 6 ozs. pepper, 3 lbs. baking powder. County—Jail prisoners to be furnished food of sufficient quantity 3 times a day. | R. S. 1897, Sec. 3545. R. S. 1897, Title 7, C. 9, Sec. 827. |
| NEW JERSEY | Plain food at discretion of keeper, subject to approval. County—Sheriffs allowed 15 cents per day for feeding prisoners. | R. S. 1910, Page 4912, Art. 7. Laws of 1911, Sec. 279. |
| NEW YORK | Sufficient quantity of inferior but wholesome food. County—Sheriff to make regulations. | Prison Law 1909, C. 47, Sec. 152. Prison Law 1909, C. 47, Art. 3, Sec. 340. |
| NORTH CAROLINA | Board to make regulations. County—1 lb. of good bread, 1 lb. of good meat and other necessities daily. | R. S. 1908, C. 116, Sec. 5390. R. S. 1908, C. 24, Sec. 1343. |
| NORTH DAKOTA | Coarse, wholesome food, sufficient quantity of meat and vegetables for health of convicts. County—3 meals a day of wholesome, well-cooked food. | Code of Criminal Procedure, 1905, C. 17, Art. 7, Sec. 10362. Code of Criminal Procedure, 1905, Sec. 10438. |
| OKLAHOMA | Board of control to make regulations. | Laws of 1908, C. 22, Art. 1. |

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| | County—Prisoners to be served three times daily with good, wholesome food in sufficient quantity. | R. S. 1903, Sec. 5719. |
| OREGON | Jail prisoners to be supplied by keeper with wholesome food. | R. S. 1910, Sec. 4534. |
| OHIO | Board of managers to make regulations. | R. S. 1910, Div. 4, C. 2, Sec. 2159. |
| PENNSYLVANIA | No prisoners to receive anything but prison allowance of food. County—Keepers to supply food. | R. S. 1903, Page 3494, Sec. 12. R. S. 1903, Page 2010, Sec. 1. |
| RHODE ISLAND | No convict to receive anything but prison allowance of food unless by order of physician. | R. S. 1909, C. 360, Sec. 39. |
| SOUTH CAROLINA | Sufficient plain, wholesome food. | R. S. 1902, Criminal Code, C. 33, Sec. 684. |
| | County—Food to be carefully provided for in all contracts. | R. S. 1902, C. 33, Sec. 684. |
| SOUTH DAKOTA | Such proportion of meat and vegetables as warden deems best for health of convict. | R. S. 1910, Code of Criminal Procedure, Sec. 675. |
| | County—Three meals a day of wholesome, well-cooked food. | R. S. 1910, Code of Criminal Procedure, Sec. 740. |
| TENNESSEE | Each convict to have ample supply of bread, $\frac{3}{4}$ lb. of bacon, 1 lb. of pork and $\frac{1}{2}$ lb. of beef and such quantities of coffee, sugar, molasses and vegetables as provided by law. | R. S. 1896, Title 7, Art. 2, Sec. 7481. |
| | County—2 meals a day of good, sound bread and meat well cooked, with vegetables at one of the meals. Plenty of water twice a day from May to November; once a day from November to May. | R. S. 1896, Title 7, Art. 6, Sec. 7430. |
| TEXAS | Sufficient plain and wholesome food. | R. S. 1911, Title 104, C. 2, Art. 6205. |
| UTAH | Food of plain, good quality sufficient for sustenance and comfort. | R. S. 1907, Sec. 2243. |
| | County—Sheriff to supply food for which he shall be allowed a reasonable sum. | R. S. 1907, Title 15, C. 7, Sec. 580. |
| VERMONT | Keeper of jail to provide good board. | R. S. 1906, Title 33, C. 262, Sec. 6117. |
| VIRGINIA | Bread of Indian meal or other coarse bread. One meal a day of coarse meat. Board of directors may regulate diet for good cause. | R. S. 1904, Title 55, Sec. 4127. |
| | County—Wholesome food of sufficient quantity. | R. S. 1904, C. 42, Sec. 928. |
| WASHINGTON | Sufficient food of plain and wholesome variety as may be most conducive to good health. | R. S. 1910, Title 68, C. 2, Sec. 8520. |
| | County—Grand jury of each county to inspect food. | R. S. 1910, Title 68, C. 1, Sec. 8503. |

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| WEST VIRGINIA | Board of directors makes regulations. | R. S. 1906, C. 162, Sec. 4638. |
| | County—Wholesome and sufficient food. | R. S. 1906, C. 41, Sec. 1342. |
| WISCONSIN | Wholesome, coarse food with such proportion of meat and vegetables as the warden shall deem best for health of prisoners. | R. S. 1889, Sec. 4919. |
| | County—Good, well-cooked food. | R. S. 1898, Title 34, C. 202, Sec. 4950. |
| 3. <i>Clothing prescribed by the Board, unless the law designates a uniform or permits the use of citizens' clothing:</i> | | |
| (a) <i>Prison uniform required:</i> | | |
| ALABAMA | Coarse and cheap uniform to distinguish from other persons. | R. S. 1907, Sec. 6537. |
| ARKANSAS | Uniform prescribed by board. | R. S. 1904, Sec. 5920. |
| CALIFORNIA | Clothing to distinguish grades of state prisoners. | Penal Code 1909, Sec. 1578. |
| | County—Boards of supervisors to provide distinctive clothing for county convicts. | Penal Code 1909, Sec. 1614. |
| FLORIDA | Uniform to be determined by board of commissioners. | R. S. 1906, C. 3, Art. 2, Sec. 4116. |
| MISSISSIPPI | Coarse, strong penitentiary stripes. | R. S. 1906, C. 107, Secs. 3641 & 3602. |
| MISSOURI | Uniform prescribed by inspectors. | R. S. 1909, Sec. 1637. |
| NEVADA | Garb of first-grade prisoners one color throughout; garb of second-grade prison stripes; garb of third-grade trousers of prison stripes; red shirts. | R. S. 1912, Sec. 1583. |
| NEW JERSEY | Comfortable clothing of coarse material, uniform in color and make. | R. S. 1877, Page 1251, Art. 211. |
| NORTH CAROLINA | | R. S. 1908, Sec. 5415. |
| RHODE ISLAND | Only reformatory convicts exempt from wearing garb. | R. S. 1909, C. 360, Sec. 17. |
| | Uniform to be determined by board. | |
| TENNESSEE | Comfortable garments of coarse, cheap material, made in uniform and peculiar style so as to distinguish convicts from other persons—style to be determined by commissioners. | R. S. 1896, Title 7, Art. 4, Sec. 7524. |
| TEXAS | Except for third-class prisoners or as punishment stripes are abolished and a suitable uniform substituted. | R. S. 1911, Title 104, C. 2, Art. 6202. |
| VIRGINIA | Distinctive uniform for each sex made of coarse material. | R. S. 1904, Title 55, Sec. 4124. |
| WASHINGTON | Garments of coarse, substantial material of distinctive manufacture. | R. S. 1910, Title 68, C. 2, Sec. 8520. |
| (b) <i>Citizens' clothing permitted:</i> | | |
| NEVADA | Stripes need not be worn by convicts engaged in road work. | Laws of 1911, C. 71. |
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| NEW HAMPSHIRE | Appropriation of \$700 to carry out vote of Governor and Council to change the clothing of the prisoners. | Laws of 1907, C. 49. |
| NORTH CAROLINA | Reformatory prisoners need not wear convict garb. | R. S. 1908, Sec. 5415. |
| (c) <i>Other provisions as to clothing, and care of person:</i> | | |
| IOWA | Prisoners to be furnished with clean shirts once a week. | R. S. 1897, Title 26, Sec. 5640. |
| MASSACHUSETTS | Shirts to be washed weekly; male prisoners shaved, and all prisoners bathed. | R. S. 1902, C. 225, Sec. 30. |
| NORTH DAKOTA | Shirts to be washed weekly. | R. S. 1905, C. 19, Sec. 10438. |
| OKLAHOMA | Shirts to be washed weekly. | R. S. 1903, Sec. 5719. |
| RHODE ISLAND | A change of underclothing to be furnished each prisoner weekly. | R. S. 1909, C. 360, Secs. 23 & 38. |
| SOUTH DAKOTA | Shirts to be washed weekly. | R. S. 1910, Sec. 740. |
| TENNESSEE | Jailer to have 2 pieces of clothing for each prisoner washed every week and to furnish necessary apparatus for shaving once a week. | R. S. 1897, Title 7, Art. 4, Secs. 7481 & 7431. |
| WISCONSIN | Shirts to be washed weekly. | R. S. 1889, Title 34, C. 202, Sec. 4950. |

VI

HOW IS HE CARED FOR?

A physician is provided with powers of inspection into the conditions of the individual and the healthfulness of his surroundings and with certain powers to remedy conditions. The supervision of punishment devolves upon the physician.

1. Health and Medical Inspection:

ALABAMA

Physician inspector to visit at least twice a year every county jail and alms house in the state and to aid in securing just, humane and economic management of such institutions. Also to aid in securing erection of sanitary buildings for accommodation of the inmates and to investigate the management of such institutions and the conduct and efficiency of persons charged with their management. County Court to attend within 30 days to recommendations of inspector and in event his recommendations are not carried out inspector may have convicts removed to jail of another county at expense of county. For failure to comply with inspector's recommendation a fine of from \$25 to \$500 may be imposed.

R. S. 1907, Secs.
7215-7220.

State Convicts—Physician inspector reports monthly to president of board of inspectors conditions, health and sanitary arrangements of the institutions with recommendations for necessary change. He devotes entire time to care of convicts.

Laws 1911, No.
303 & No. 530.

ARIZONA

Fully qualified physician, resident at prison.

R. S. 1901, Title
56, C. 2, Sec.
3585.

Convicts to be removed to place of safety when contagious disease or pestilence endangers their health.

R. S. 1901, Title
15, Sec. 1191.

ARKANSAS

Physician attends all sick convicts; examines cells weekly as to cleanliness and ventilation, food as to quality, quantity and general conditions, and convicts as to physical ability to labor; to report any convict likely to die of incurable disease, which convict may be pardoned. Physician has full charge of hospital and selects nurses from among the convicts.

R. S. 1904, C.
123, Secs. 5884-
5889.

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| CALIFORNIA | Jail prisoners to be removed in event of pestilence or contagious disease. | R. S. 1909, Penal Code, Title 2, Sec. 1608. |
| | Hair cutting for sanitary purposes. | Sec. 1615. |
| COLORADO | Physician in good standing to perform such daily duties as commissioners determine. | Acts of 1909, H. B. No. 149. |
| | Removal of convicts to place of safety in case of pestilence or contagious disease. | R. S. 1908, C. 108, Sec. 4890. |
| | Jail prisoners—Suffering from contagious disease to be removed to quarantine. | R. S. 1908, C. 115, Sec. 5058. |
| CONNECTICUT | Physician in good standing to visit prison once a month or when commissioners request. | R. S. 1902, Title 18, C. 176, Sec. 2906. |
| | Physician skilled in treatment of insane to act as consulting physician. | Sec. 2904. |
| | Prisoners suffering from venereal disease whose discharge would be dangerous to public health to be detained in institution until physician reports such danger overcome. | R. S. 1902, Title 18, C. 176, Secs. 2975-6. |
| | Provision to be made for care of sick jail prisoners. | Secs. 2935 & 2941. |
| | Prisoner suffering from a malignant disease or malady which will be incurable during his term of imprisonment to be discharged. | Sec. 2943. |
| DISTRICT OF COLUMBIA | Supreme Court to make rules necessary to health of prisoners. | R. S. 1911, C. 35, Sec. 1196. |
| FLORIDA | Physician to visit prison hospital at least once each day. | R. S. 1906, Title 4, C. 2, Art. 5, Sec. 4133. |
| | Leasees to provide medical care for sick convicts; such convicts to be inspected daily by a physician designated by board of state institution and to be paid from profits of contract; he shall prohibit sick convict from working and see that provisions for care of convicts are carried out. | R. S. 1906, Div. 5, Title 4, C. 2, Secs. 4150-1. |
| GEORGIA | Physicians for convict camps may continue the regular practice of their profession. | R. S. 1911, Sec. 1196. |
| | Grand juries to inspect jails in respect to sanitary conditions. | R. S. 1911, Sec. 1196. |
| IDAHO | Physician to examine cells and all sanitary arrangements of the prison and the food and clothing of convicts once a week. | R. S. 1908, Part 3, Title 1, C. 2, Sec. 8483. |
| | In case of pestilence convicts to be removed to place of safety. | R. S. 1908, Part 3, Title 1, C. 3, Sec. 8499. |
| | County Commissioners to inspect jails once every three months and see that necessary precautions are taken against sickness or infection. | R. S. 1908, Part 3, Title 3, Sec. 8543. |
| ILLINOIS | Prison physician to attend to all the wants of sick convicts; to examine weekly as to cleanliness and ventilation | R. S. 1909, C. 108, Sec. 32. |

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| | of cells; to examine quantity and quality of food weekly. | |
| | Keeper to supply medical aid for jail prisoner. | R. S. 1909, C. 75, Sec. 19. |
| INDIANA | Prison physician to have general oversight as to health of convicts. | R. S. 1908, C. 124, Sec. 9838. |
| IOWA | Prison physician to have oversight of health of convicts. | R. S. 1897, Title 26, C. 2, Sec. 5672. |
| | Keeper to supply medical aid for jail prisoners. | R. S. 1907, Title 26, Sec. 5643. |
| KANSAS | Prison physician to have care of health of prisoners. | R. S. 1909, C. 97, Sec. 6840. |
| | County to provide medical aid for sick prisoners. | R. S. 1909, C. 97, Art. 16, Sec. 6907. |
| KENTUCKY | Prison physician to have full care of sick convicts; to manage hospital and make recommendations as to food, etc., after daily visiting the kitchen. | R. S. 1909, C. 97, Sec. 3802. |
| | County—Jail physician to be appointed in all counties having population of 150,000 or more. | R. S. 1909, C. 73, Sec. 2237. |
| LOUISIANA | Physician to visit convicts at least three times a week. | Acts of 1900, No. 70, Sec. 8. |
| | Lessees to provide medical aid for county convicts. | Acts of 1894, No. 29, Sec. 4. |
| | 12½ cents extra allowed for diet of sick convicts. | R. S. 1904, Sec. 2837. |
| MAINE | Prison physician to have oversight of health of convicts. | R. S. 1903, C. 141, Sec. 33. |
| | County to provide medical aid for jail prisoners. | R. S. 1903, C. 82, Sec. 46. |
| MARYLAND | Prison physician to visit prison daily and to examine prisoners on admission, noting bodily defects for direction of warden in assigning tasks. | R. S. 1904, Art. 27, Secs. 613-623. |
| MASSACHUSETTS | Prison physician to care for all state and county prisoners. | R. S. 1902, C. 225, Sec. 100. |
| | Prison camp and hospital to be established. | R. S. 1908, Page 1478. |
| MICHIGAN | Prison physician to examine all sick convicts and cells for purpose of regulating ventilation and cleanliness, etc., and to superintend all corporal punishment. | R. S. 1897, C. 75, Sec. 2094. |
| | County supervisors to provide medical aid for sick convicts. | R. S. 1897, C. 86, Sec. 5. |
| MINNESOTA | State board of health to have supervision over construction and equipment of penal institution in regard to sanitary arrangements. | R. S. 1905, C. 29, Sec. 2131. |
| | Prisoners to be removed to place of safety in case of epidemic of contagious disease endangering their lives. | R. S. 1905, C. 105, Sec. 5442. |
| MISSISSIPPI | Prison physician to give entire time to care of convicts. | R. S. 1906, C. 107, Sec. 3598. |
| MISSOURI | Prison physician to attend all sick convicts, and examine weekly as to ventilation of cells, cleanliness, etc., also as to quantity, quality and condition of food. | R. S. 1909, C. 19, Sec. 1646. |

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| | County to provide medical aid for sick prisoners. | R. S. 1909, C. 19, Sec. 1601. |
| MONTANA | County Commissioners to take necessary precautions against sickness or infection. | R. S. 1907, Part 3, Title 2, Sec. 9777. |
| NEBRASKA | Prison physician who shall be a member of penitentiary medical board. | R. S. 1911, Sec. 10107. |
| | Judges of district courts to make rules as to employment of medical and surgical aid for sick convicts. | R. S. 1911, Sec. 10137. |
| NEW MEXICO | Prison physician who shall express no opinion as to disability of prisoner except on his record. | R. S. 1897, Secs. 3531-3. |
| NEW HAMPSHIRE | Warden to make regulations for health of prisoners. | R. S. 1901, C. 285, Sec. 4. |
| | Jailers to provide necessary medical aid for prisoners. | R. S. 1901, C. 282, Sec. 4. |
| NEW JERSEY | Prison physician to visit each prisoner once a week or oftener if the state of his health requires; he has supervision over cleanliness, ventilation and diet. | R. S. 1910, Page 4912, Art. 5. |
| NEW YORK | Prison physician to attend daily all sick convicts, and to examine cells as to cleanliness, etc., weekly and to examine food daily. | Prison Law, 1909, C. 47, Art. 6, Sec. 138. |
| | County—supervisors to appoint physician. | Sec. 348. |
| | Prisoners to be removed to place of safety in case of contagious disease. | Sec. 155. |
| | Same provisions for county prisoners. | Sec. 351. |
| NORTH CAROLINA | All prisoners to be examined in regard to tuberculosis within 5 days after confinement. | R. S. 1908, Sec. 1343. |
| | Separate cells for tubercular convicts. | R. S. 1908, C. 116, Sec. 5390. |
| | Cells for tubercular prisoners in either jails or state prisons to be thoroughly fumigated before being used for any other purpose. | R. S. 1908, C. 24, Secs. 1336 & 1343. |
| | A parcel of land not exceeding 6 acres to adjoin each jail and all prisoners not committed for treason or felony, giving bond to sheriff of county to keep within rules, to walk therein out of the prison for the benefit of their health. | R. S. 1908, C. 24, Sec. 1339. |
| NORTH DAKOTA | Prison physician to perform duties prescribed by board. | Criminal Code, 1905, C. 17, Sec. 10361. |
| | Judges of district courts to make rules for employment of proper medical and surgical aid for convicts. | R. S. 1905, C. 17, Sec. 10418. |
| OHIO | State—Prison physician to perform duties prescribed by board. | R. S. 1910, Div. 4, C. 2, Sec. 2194. |
| | County—Medical care to be supplied. | R. S. 1910, Div. 4, C. 5, Sec. 3177. |

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| | Order to be obtained from court sentencing prisoners for removal of those suffering from contagious disease to isolation hospital. | R. S. 1910, Div. 5, C. 11, Sec. 4444. |
| OKLAHOMA | County commissioners to inspect as to health of jail prisoners. | R. S. 1903, Sec. 5715. |
| OREGON | Keeper to supply county convicts with necessary medical aid. | R. S. 1910, Sec. 4534. |
| PENNSYLVANIA | State—Prison physician to visit every prisoner twice weekly; to examine into mental condition of all prisoners and when he believes the mind of the prisoner to be affected by discipline to recommend modifications. To give directions for health and cleanliness of prisoners and recommend changes in diet when necessary. In counties of from 5,000 to 800,000 inhabitants salary of jail physician to be \$1,800 per annum. | R. S. 1903, Page 3493, Sec. 42. |
| RHODE ISLAND | Prison physician to be appointed by board. | R. S. 1903, Page 880, Sec. 26. |
| SOUTH CAROLINA | Prison physician to inspect all state prisoners and report to Governor. | R. S. 1909, Title 38, C. 360, Sec. 15. |
| SOUTH DAKOTA | Prison physician to be appointed by board. Grand jury of each county responsible for health of convicts. | Criminal Code, 1902, Title 3, C. 33, Sec. 688. |
| TENNESSEE | Prison physician to be appointed by board. From November 15th to March 15th to visit prison at 7 A. M. each day and examine physical condition of convicts and report on their ability to work. If unable to work he shall direct that they be returned to their cells or the hospital. From March 15th to November 15th he shall visit prison at 6.30 A. M. for same purpose. | R. S. 1910, Title 12, C. 1, Sec. 676. |
| TEXAS | Prison physician to visit penitentiary daily and examine health of convicts; he may employ nurses with the approval of the assistant superintendent in cases of serious illness or epidemics; in charge of sanitary regulation of prison and to see all precautions are taken to keep the prison healthy and to prevent contagious disease. County commissioners responsible that prisoners be kept in a healthy condition. | R. S. 1910, C. 5, Sec. 762. |
| UTAH | Prison physician to examine all cells weekly and report as to cleanliness. | R. S. 1897, Title 79, C. 4, Secs. 3681-6. |
| VIRGINIA | Prison physician to see that convicts take the exercise necessary to maintain their health. County commissioners to provide suitable medical aid for convicts. | R. S. 1896, Title 7, C. 2, Art. 2, Sec. 7506. |

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| WASHINGTON | Superior judges to make rules as to employment of medical and surgical aid for county convicts. | R. S. 1910, C. 1, Sec. 8495. |
| WEST VIRGINIA | County convicts to have necessary medical attention. | R. S. 1906, C. 41, Sec. 1342. |
| WISCONSIN | Proper medical care for sick prisoner in state prison. County to supply proper medical aid for sick prisoners. | R. S. 1898, C. 201, Sec. 4904. R. S. 1898, C. 202, Sec. 4954. |
| WYOMING | Sheriff to furnish medical attention for jail prisoners. | R. S. 1910, C. 86, Sec. 1091. |

2. Religious teaching is provided under certain limitations:

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| ALABAMA | The prison chaplain to give entire time to work with the convicts. Convicts to be provided with Bibles. | R. S. 1907, C. 191, Sec. 6503. R. S. 1907, C. 191, Sec. 6539. |
| ARIZONA | Two chaplains of different religious beliefs to give as much instruction to convicts as employment, etc., permits, and to have access at all times to the convicts. | R. S. 1901, Title 56, Sec. 3576. |
| ARKANSAS | Prison chaplain to hold religious services at least weekly. | R. S. 1904, C. 123, Sec. 5892. |
| COLORADO | Prison chaplain to perform duties prescribed by commissioners. | R. S. 1908, C. 108, Secs. 4860-4862. |
| CONNECTICUT | Prison chaplain to give entire time to work with convicts. Sunday-school to be conducted in the prison. | R. S. 1902, C. 176, Sec. 2911. R. S. 1902, C. 176, Sec. 2911. |
| ILLINOIS | Prison chaplain to visit convicts in their cells and give moral instruction. Each convict to be furnished with a Bible. | R. S. 1909, Page 1670, Sec. 23. R. S. 1909, Page 1670, Sec. 23. |
| IOWA | Prison chaplain to have access to convicts at all reasonable times. | R. S. 1897, Title 26, C. 2, Sec. 5671. |
| KANSAS | Prison chaplain to preach every Sunday and to use best interests to promote the religious and moral welfare of the convicts. | R. S. 1909, C. 108, Sec. 8577. |
| KENTUCKY | Prison chaplain to give full time to work with convicts. | R. S. 1908, C. 97, Sec. 3803. |
| LOUISIANA | Prison chaplain to have access to the prisoners at all times. | Acts of 1900, No. 70, Sec. 7. |
| MAINE | \$50 appropriation annually for Sunday-school at which persons from outside the prison may assist. Prison chaplain to hold divine service each Sunday. | R. S. 1903, C. 141, Sec. 50. R. S. 1903, C. 141, Sec. 50. |
| MARYLAND | To hold divine service at which warden or assistant warden and all the convicts shall be present unless prevented by sickness. | R. S. 1904, Art. 27, Sec. 635. |
| MASSACHUSETTS | Sunday-school to be conducted by such instructors as board deems advisable. | R. S. 1902, C. 225, Sec. 73. |
| MICHIGAN | Prison chaplain to furnish each convict with a bible and to visit sick. | R. S. 1897, Sec. 2097. |

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| MINNESOTA | Jail prisoners to be provided with Bibles at expense of county. Any minister willing to conduct service for jail prisoners has permission to do so. | R. S. 1905, C. 106, Sec. 5477. R. S. 1905, C. 106, Sec. 5477. |
| MISSISSIPPI | Prison chaplain to visit each of the convict farms at least once a month; to hold Sunday services at penitentiary in the morning for the whites and in the afternoon for the blacks. | R. S. 1908, C. 107, Sec. 3598. |
| MISSOURI | All clergymen of the City of Jefferson to have free access to the convicts at all times in accordance with prison discipline. | R. S. 1909, C. 19, Art. 1, Sec. 1664. |
| NEVADA | Divine service each Sunday; expense not to exceed \$520 per year. Commissioners to furnish Bibles and other books they deem necessary. | R. S. 1912, Sec. 7576. R. S. 1912, Sec. 7576. |
| NEW HAMPSHIRE | Suitable religious instruction to be provided. | R. S. 1901, Title 35, C. 285, Sec. 24. |
| NEW JERSEY | Prisoners to be furnished the Bibles and such other books as keeper deems necessary, and to receive religious instruction from competent persons. | R. S. 1910, Page 4910, Art. 3. |
| NEW MEXICO | Prison chaplain appointed by governor. | R. S. 1897, Sec. 3547. |
| NEW YORK | Prison chaplain to attend to spiritual wants of prisoners. | R. S. 1909, C. 47, Sec. 292. |
| NORTH CAROLINA | \$50 appropriation annually for Sunday-school. | R. S. 1908, C. 116, Sec. 5405. |
| NORTH DAKOTA | Warden to employ resident clergymen of Bismarck to officiate in turn; compensation \$5.00 per week. | R. S. 1905, Sec. 10352. |
| OHIO | \$400 appropriation for religious services and library at penitentiary. Warden to furnish each convict with a Bible. | Acts of 1910, H. B., No. 536. R. S. 1910, Sec. 2185. |
| OKLAHOMA | Convicts to be supplied with Bibles. Chaplain whose salary shall be \$900 per year. | R. S. 1903, Art. 23, Sec. 5720. Laws of 1909, C. 31. |
| PENNSYLVANIA | Eastern Penitentiary—Moral instructor. Western Penitentiary—Non-sectarian religious services. | R. S. 1903, Page 3497, Sec. 58. R. S. 1903, Page 3497, Sec. 59. |
| RHODE ISLAND | Prison chaplain to perform religious services and act as agent for procuring employment for prisoners on release. | R. S. 1909, C. 360, Sec. 15. |
| SOUTH CAROLINA | Prison chaplain to give religious instruction to prisoners. Sunday-school at reformatory. | R. S. 1912, Secs. 960-961. |
| TENNESSEE | Religious services on Sunday. Bibles and other moral books to be furnished to convicts. | R. S. 1896, Title 7, Art. 4, Sec. 7530. R. S. 1896, Title 7, Art. 4, Secs. |
| TEXAS | Religious services at prisons, farms and camps; prisoners to attend at least two such services per month. | R. S. 1911, Sec. 6204. |

| | | |
|------------|---|--|
| UTAH | Religious services as board deems wise. | R. S. 1907, C. 10, Sec. 2264. |
| VERMONT | Prison chaplain appointed by board. | R. S. 1906, Title 30, C. 260, Sec. 5993. |
| WASHINGTON | Prison chaplain appointed by governor. | R. S. 1910, Title 78, C. 2, Sec. 8532. |
| WISCONSIN | Both Protestant and Catholic chaplains. | R. S. 1898, C. 201, Sec. 4905. |
| WYOMING | Prison chaplain to have charge of moral welfare of the prisoners. | R. S. 1910, C. 41, Sec. 528. |

3. Moral Education.

(a) Good conduct awarded by reduction of the time of confinement.

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|---|--|---------------------|---|------------------------|
| ALABAMA | By order of Governor. 2 mos. from each of 1st 2 years. 3 mos. from each of next 2 years. 4 mos. from each of next 2 years. 5 mos. from each of next 2 years. 6 mos. from each year after the 8th. If sentence is less than 2 years and more than 6 mos. pro rata deduction. No deduction when sentence is under 6 mos. | R. S. 1907, Sec. 7514. | ALABAMA | Convict convicted a second time for crime involving moral turpitude; convict who escapes. | R. S. 1907, Sec. 7514. |
| ARIZONA | 2 mos. from each of 1st 2 years. 4 mos. from each of next 2 years. 5 mos. from remaining years. Similar deductions in California and Oregon. | R. S. 1901, Title 56, C. 2, Sec. 3589. | ARIZONA | Convict assaulting fellow convict, guard, etc. | R. S. 1901, Sec. 3589. |
| ARKANSAS | 1 mo. from 1st year. 2 mos. from 2nd year. 3 mos. from 3rd to 10th years. 6 mos. from succeeding years. | R. S. 1904, Sec. 5904. | ARKANSAS | Convict who escapes or attempts escape forfeits all good time. Convict violating prison rules so as to be corrected three times forfeits all good time. | R. S. 1904, Sec. 5905. |

(A) When permitted:

| | | |
|-------------|---|--------------------------------|
| CALIFORNIA | 2 mos. from each of 1st 2 years. | Penal Code 1909, Sec. 1588. |
| | 4 mos. from each of next 2 years. | |
| | 5 mos. from remaining years. | |
| | Similar provisions in Arizona and Oregon. | |
| | County convicts 5 days per mo. | R. S. 1909, Sec. 1614. |
| COLORADO | 1 mo. from 1st year. | R. S. 1908, C. 108, Sec. 4871. |
| | 2 mos. from 2nd year. | |
| | 3 mos. from 3rd year. | |
| | 4 mos. from 4th year. | |
| | 5 mos. from 5th year. | |
| | 6 mos. from succeeding years. | |
| | Similar provisions in Idaho and New Mexico. | |
| | Extra deduction for convicts engaged in road work, conditioned on good behavior and cheerful compliance with all rules. | Laws of 1905, S. B. 224. |
| CONNECTICUT | 60 days from each of 1st 5 years if sentence be 5 years or less. | R. S. 1902, Sec. 2900. |
| | 90 days from each year if sentence be over 5 years. | |
| | County convicts. 5 days from each mo. if sentence is over 3 mos. | R. S. 1902, Sec. 2956. |
| DELAWARE | 5 days from each month during 1st year. | Acts of 1898, C. 247. |
| | 7 days from each month from 2nd year. | |
| | 9 days from each month 3rd year. | |
| | | |

(B) When forfeited:

| | | |
|-------------|---|-----------------------------|
| CALIFORNIA | Convict who violates prison rules, assaults guard, fellow convict etc. shall forfeit such portion of gain time as Board directs. | Penal Code 1909, Sec. 1588. |
| | | |
| COLORADO | Convict who violates rules. | R. S. 1908, Sec. 4872. |
| | | |
| CONNECTICUT | Loss of all or part of time for refusal to conform with regulations. This provision does not apply when sentence is less than one year. | R. S. 1902, Sec. 2900. |
| | | |
| DELAWARE | For every violation of rules convict forfeits all gained time. | R. S. 1898, C. 247. Sec. 5. |
| | | |

(A) When permitted:

| | | |
|----------|--|---|
| FLORIDA | 10 days from each month each succeeding year. | R. S. 1906, Title 4, Art. 6, Sec. 4140. |
| | 2 days from 1st mo. | |
| | 13 days from 1st 3 mos. | |
| | 25 days from 1st 6 mos. | |
| | 1 mo. and 3 days from 1st 8 mos. | |
| GEORGIA | 1 mo. and 21 days from each year. | |
| | 2 mos. from 2nd year. | R. S. 1911, Sec. 1221. |
| | 3 mos. from each year until the 10th. | |
| | 4 mos. from remaining years. | |
| | County convicts 4 days from each month. | R. S. 1911, Sec. 1179. |
| IDAHO | 1 mo. from 1st year. | R. S. 1908, Sec. 8504. |
| | 2 mos. from 2nd year. | |
| | 3 mos. from 3rd year. | |
| | 4 mos. from 4th year. | |
| | 5 mos. from 5th year. | |
| | 6 mos. from succeeding years. | |
| | Similar deductions in Colorado and New Mexico. | |
| ILLINOIS | 1 mo. from 1st year. | R. S. 1909, C. 108, Sec. 45. |
| | 2 mos. from 2nd year. | |
| | 3 mos. from 3rd year. | |
| | 4 mos. from 4th year. | |
| | 5 mos. from 5th year. | |
| | 6 mos. from succeeding years. | |

(B) When forfeited:

| | | |
|----------|---|------------------------------|
| FLORIDA | Violation of rules causes forfeiture of gain time. | R. S. 4140. |
| GEORGIA | Only applied to convicts not sentenced for life and who observe rules. | Sec. 1221. |
| IDAHO | Convict who escapes, attempts escape, or injures guard forfeits all good time. | R. S. 1908, Sec. 8504. |
| ILLINOIS | For 1st violation of rules convict forfeits 2 days; for second offense 4 days; for third eight days; for fourth sixteen days; for more than 4 offenses warden may deprive him of such portion as he deems wise; convict also forfeits number of days he is in punishment. | R. S. 1909, C. 108, Sec. 46. |

(A) When permitted:

| | | |
|-----------|--|--|
| INDIANA | 1 mo. from 1st year. | R. S. 1908, Sec. 9886. |
| | 2 mos. from 2nd year. | |
| | 3 mos. from 3rd year. | |
| | 4 mos. from 4th year. | |
| | 5 mos. from 5th year. | |
| | 5 mos. from 5th to 21st years. | |
| IOWA | 1 mo. from 1st year. | R. S. 1897, Title 26, C. 2, Sec. 5703. |
| | 2 mos. from 2nd year. | |
| | 3 mos. from 3rd year. | |
| | 4 mos. from 4th year. | |
| | 5 mos. from 5th year. | |
| | 6 mos. from 6th to 25th years. | |
| | Similar provisions in Montana, Wisconsin, Wyoming. | |
| KANSAS | 3 days each mo. from 1st year. | R. S. 1909, Sec. 8581. |
| | 6 days each mo. from 2nd year. | |
| | 8 days each mo. during remainder of sentence. | |
| | 7 days from each mo. Similar provisions in Maine. | R. S. 1909, C. 97, Sec. 3801. |
| LOUISIANA | Board of control to make rules for commutation of sentences. | R. S. 1908, page 623, Sec. 6. |
| | ½ commutation to second termers; none to third termers. | |
| | Jail prisoners one-sixth of sentences. | R. S. 1908, page 623, Sec. 6. |

(B) When forfeited:

| | | |
|---------|---|---|
| INDIANA | For 1st offense 2 days; for 2nd 4 days; 3rd 8 days; 4th 16 days; and for more than 4 offenses warden may use judgment. If first offenses are serious warden may deprive him of more than time specified. | R. S. 1908, C. 124, Sec. 9887. |
| | | |
| IOWA | 1st offense 2 days; 2d offense 4 days; 3rd offense 8 days; 4th offense 16 days. In addition thereto days he is in punishment. For more than 4 offenses warden, with approval of governor, may use judgment as to depriving him of all or part of gain time. | R. S. 1897, Title 26, C. 2, Sec. 5704. |
| | | |
| KANSAS | All or part of good time. | R. S. 1909, C. 108, Art. 30, Sec. 8581. |
| | | |

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|---|--------------------------------|---------------------|--|--------------------------------|
| MAINE | 7 days from each month. Does not apply to life prisoners. Similar provisions in Kentucky. | R. S. 1903, C. 141, Sec. 15. | | | |
| MARYLAND | 5 days from each mo. | R. S. 1904, Art. 27, Sec. 474. | MARYLAND | All good time in mos. delinquency accrues to be forfeited; according to nature of offense, board may deduct good time. | R. S. 1904, Art. 27, Sec. 474. |
| MASSACHUSETTS | 1 day per mo. if sentence be 4 mos. and less than 1 year. 3 days per mo. from 1st to 3rd years. 4 days per mo. from 3rd to 5th years. 5 days per mo. from 5th to 10th years. 6 days per mo. from succeeding years. | R. S. 1902, C. 225, Sec. 113. | MASSACHUSETTS. | Forfeiture for violation of rules. | R. S. 1902, C. 225, Sec. 113. |
| MICHIGAN | 5 days per mo. from 1st 2 yrs. 6 days per mo. from 2nd 2 yrs. 7 days per mo. from 3rd 2 yrs. 9 days per mo. from 7th, 8th and 9th yrs. 10 days per mo. from 10th to 14th yrs. 12 days per mo. from 15th to 19th yrs. 15 days per mo. from succeeding yrs. | R. S. 1897, C. 75, Sec. 33. | MICHIGAN | For violation of rules or attempt to escape. | R. S. 1897, C. 75, Sec. 33. |
| MINNESOTA | 5 days per mo. during 1st yr. 7 days per mo. during 2nd yr. 9 days per mo. during 3rd yr. 10 days per mo. during remainder of sentence. | R. S. 1905, C. 105, Sec. 5445. | MINNESOTA | Only granted if convict passed entire time without violation of rules. | R. S. 1909, C. 105, Sec. 5445. |

(A) When permitted:

| | | |
|-------------|--|--|
| MISSISSIPPI | For efficient service, board may allow county convicts $\frac{1}{4}$ time. | R. S. 1905, C. 22, Sec. 842. |
| MISSOURI | Convict serving $\frac{3}{4}$ of time in exemplary manner shall be discharged in same manner as if he had been pardoned. In such cases no pardon from the Governor is necessary. | R. S. 1909, Art. 19, Sec. 1656. |
| MONTANA | 1 mo. from 1st year. 2 mos. from 2nd year. 3 mos. from 3rd year. 4 mos. from 4th year. 5 mos. from 5th year. 6 mos. from 6th to 25th year. Similar provisions in Iowa, Wisconsin and Wyoming. | R. S. 1907, Sec. 9737. |
| NEBRASKA | 2 mos. from 1st and 2nd years. 3 mos. from 3rd year. 4 mos. from succeeding years. Similar provisions in Nevada. | R. S. 1911, Sec. 2737. |
| NEVADA | 2 mos. from 1st and 2nd years. 3 mos. from 3rd year. 4 mos. from succeeding years. Similar provisions in Nebraska. Additional deduction of 10 days each mo. for good conduct on road work. County convicts allowed deduction of 5 days for each mo. | R. S. 1912, Sec. 7581. Laws of 1911, C. 71. R. S. 1912, Sec. 7622. |

(B) When forfeited:

| | | |
|----------|---|---------------------------|
| MONTANA | Good time conditioned on good behavior and regular labor during good health. | R. S. 1907, Sec. 9737. |
| NEBRASKA | Good time conditioned on good conduct and faithful, orderly and peaceful performance of duties; misconduct can cause loss of 75 per cent. of time gained. | R. S. 1911, Secs. 2737-8. |
| NEVADA | Forfeited by assault on keeper or other violation of rules. | Sec. 7581. |

(A) When permitted:

| | | |
|---------------|----------------------|----------|
| NEW HAMPSHIRE | 1 day per mo. | R. S. |
| | if sentence be 2 | 1901, |
| | years or less. | C. 285. |
| | 2 days per mo. | Sec. 14. |
| | if sentence be 3 | |
| | years. | |
| | 3 days per mo. | |
| | if sentence be 4 | |
| | years. | |
| | 4 days per mo. | |
| | if sentence be 5 | |
| | years. | |
| | 5 days per mo. | |
| | if sentence be | |
| | from 5 to 7 years. | |
| NEW JERSEY | 6 days per mo. | |
| | if sentence be | |
| | from 6 to 10 | |
| | years. | |
| | 7 days per mo. | |
| | if sentence be | |
| | from 10 to 15 | |
| | years. | |
| | 8 days per mo. | |
| | if sentence be | |
| | from 15 to 20 | |
| | years. | |
| | 10 days per | |
| | mo. for any other | |
| | time but life im- | |
| | prisonment. | |
| NEW JERSEY | 2 days for each | R. S. |
| | mo. of faithfully | 1910, |
| | performed labor. | Page |
| | 2 days for each | 4916, |
| | mo. of orderly | Art. 10. |
| | deportment. | |
| | 2 days for each | |
| | mo. of manifest | |
| | effort at intellect- | |
| | ual improvement | |
| | to be certified by | |
| | moral instructor. | |
| | Additional | R. S. |
| | good time of 1 | 1891, |
| | day per mo. for | Page |
| | 1st year of good | 498, |
| | conduct. | Art. 2. |
| NEW MEXICO | For each suc- | |
| | ceeding year of | |
| | good conduct | |
| | commutation to | |
| | increase progres- | |
| NEW MEXICO | sively one day | |
| | per mo. | |
| | 1 mo. from 1st | R. S. |
| | year. | 1897, |
| | 2 mos. from | Sec. |
| NEW MEXICO | 2nd year. | 3536. |
| | 3 mos. from | |
| | 3rd year. | |

(B) When forfeited:

| | | |
|------------|--------------------|----------|
| NEW JERSEY | For flagrant | R. S. |
| | misconduct. In- | 1910, |
| | spectors may de- | Page |
| | clare a forfeiture | 4916, |
| | of the whole or | Sec. 10. |
| | part of time pre- | |
| | viously gained. | |
| NEW MEXICO | Good time de- | R. S. |
| | pendent on good | 1897, |
| | conduct through | Sec. |
| | whole time of | 3536. |
| | sentence and | |
| | final pardon by | |
| | governor. | |

(A) When permitted:

4 mos. from
4th year.
5 mos. from
5th year.
6 mos. from
succeeding years.

Similar provisions
in Colorado
and Idaho.

NEW YORK

5 days per mo.
if sentence be
less than 1 year.

Laws of
1912,
Cha. 79.

2 mos. from
1st and 2nd years.

4 mos. from
3d and 4th years.

5 mos. from
each subsequent
year.

Applicable to
convicts confined
under definite
sentences, when
term equals 6
mos.; not appli-
cable to life sen-
tences.

NORTH
CAROLINA

5 days for each
mo.; for every
10 days thus
earned further
reward of \$1.00;
for every \$5.00
thus earned
further deduc-
tion of 5 days.

R. S.
1908,
C. 116,
Sec.
5402.

NORTH
DAKOTA

2 mos. from
1st to 3rd years.
75 days from
3rd to 5th year.

R. S.
1905,
C. 17,
Art. 6.

3 mos. from
5th to 7th year.

105 days from
7th to 11th year.

4 mos. each
year during re-
mainder of sen-
tence.

Further com-
mutation, at dis-
cretion of Gov-
ernor, upon
recommendation
in writing by
board of trustees,
may be allowed
to convict who
surpasses the
average inmates
in diligence in
study or labor or
in good behavior
or otherwise.

R. S.
1905,
C. 17,
Art. 6.

(B) When forfeited:

NORTH
CAROLINA

Convict as-
saulting prison
officer or taking
part in insurrec-
tion or attempt-
ing escape for-
feits all good
time.

R. S.
1908,
C. 116,
Sec.
5402.

NORTH
DAKOTA

For infraction
of rules convict
may be deprived
of gain time.

R. S.
1905,
Art. 6,
C. 17.

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|--|---------------------------------|---------------------|---|---------------------------------|
| OHIO | 5 days from sentence of 1 year. | R. S. 1910, C. 2, Sec. 2163. | OHIO | Commutati o n dependent on entire time being passed without violation of rules. | R. S. 1910, C. 2, Sec. 2163. |
| | 6 days from sentence of 2 years. | | | | |
| | 8 days from sentence of 3 years. | | | | |
| | 9 days from sentence of 4 years. | | | | |
| | 10 days from sentence of 5 years. | | | | |
| | 11 days from sentence of 6 or more years. | | | | |
| | If sentence be mos. or fraction of a year the deduction as provided for year next higher than maximum sentence. | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| OREGON | 2 mos. from each of 1st 2 years. | R. S. 1910, C. 13, Sec. 4510. | OREGON | All credits may be forfeited in case of failure to work. | R. S. 1910, Sec. 4516. |
| | 4 mos. from each of next 2 years. | | | Misc onduct forfeits all good time earned previously. | R. S. 1910, Sec. 4512. |
| | 5 mos. from remaining years. | | | | |
| | Similar provisions in Arizona and California. | | | | |
| | Life prisoners who have earned $\frac{2}{3}$ of time during first 5 years, $\frac{3}{4}$ of time during second 5 years, $\frac{7}{8}$ of time during third 5 years may be pardoned by the Governor at the end of 15 years. | R. S. 1910, C. 13, Sec. 4514. | | | |
| | | | | | |
| PENNSYLVANIA | 1 day from 1st month; 2 additional days from 2nd mo.; 3 additional days from each succeeding month of first year. 4 days per mo. from 2nd to 10th years; 2 days per mo. from succeeding years. | R. S. 1907, Page 3496, Sec. 54. | PENNSYLVANIA | For infraction of rules inspectors may strike off whole or part of gain time. | R. S. 1907, Page 3486, Sec. 54. |
| | | | | | |

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|--|---|---------------------|---|--|
| RHODE ISLAND | For 1 mo. of good behavior Governor, upon recommendation of Board, may deduct number of days there are years in sentence, provided that if sentence be over 5 years, only 5 days shall be deducted from the month. | R. S. 1909, C. 360, Sec. 31. | RHODE ISLAND | Every day convict is shut up or punished one day is deducted from good time. | R. S. 1909, C. 360, Sec. 31. |
| SOUTH DAKOTA | 2 mos. from 1st to 3rd years. 3rd yr. 3 mos. 4th to 10th yrs. 4 mos.; 10th to 20th yrs. 5 mos.; succeeding years 6 mos. | R. S. 1910, Sec. 686. | SOUTH DAKOTA | For infraction of rules good time is forfeited. | R. S. 1910, Sec. 686. |
| TENNESSEE | 1 mo. from 1st year. 2 mos. from 2nd year. 3 mos. from each subsequent year until the 10th. 4 mos. from each remaining year. County convicts—Deduction at discretion of Board of County Commissioners. | R. S. 1896, Title 7, Art. 2, Sec. 7482. R. S. 1896, Sec. 7423. | TENNESSEE | Good time dependent on proper demeanor. If prisoner escapes he forfeits all good time. | R. S. 1896, Title 7, Art. 2, Sec. 7482. R. S. 1896, Title 7, Art. 2, Sec. 7423. |
| UTAH | 15 days from sentence of 3 mos. 30 days from sentence of 6 mos. 2 mos. from 1 year. 3 mos. from 2 years. 4 mos. from 3 years. 5 mos. from 4 years. 6 mos. from 5 years. From all time in excess of 5 years half-time shall be deducted. | R. S. 1907, Sec. 1686, X. 14. | UTAH | For any infraction of rules convict may be deprived of all or any portion of good time. | R. S. 1907, Title 57, Sec. 1686, X. 16. |

(A) When permitted:

| | | |
|------------|--|---|
| VERMONT | 5 days from each mo. of good conduct. | R. S. 1906, C. 261, Sec. 6088. |
| VIRGINIA | 4 days from each mo. of good conduct, with approval of Governor. County convicts 4 days allowed for each mo. of good conduct on road or quarry force. | R. S. 1904, Title 55, Sec. 4144. Laws of 1910, C. 217. |
| WASHINGTON | 2 mos. from 1st 2 years. 4 mos. from next to 2 years. 5 mos. from succeeding years. | R. S. 1910, Sec. 8521. |
| WISCONSIN | 1 mo. from 1st year. 2 mos. from 2nd year. 3 mos. from 3rd year. 4 mos. from 4th year. 5 mos. from 5th year. 6 mos. from 6th to 25th year. Similar provisions in Iowa, Montana and Wyoming. | R. S. 1889, Sec. 4928. |
| WYOMING | 1 mo. from 1st year. 2 mos. from 2nd year. 3 mos. from 3rd year. 4 mos. from 4th year. 5 mos. from 5th year. 6 mos. from 6th to 25th year. Similar provisions in Iowa, Montana, Wisconsin. Pro rata for part of a year. | R. S. 1910, C. 41, Sec. 522. |

(B) When forfeited:

| | | |
|------------|---|---------------------------------|
| VERMONT | Good time reduced five days for each mo. in which convict misbehaves. | R. S. 1906, C. 261, Sec. 6088. |
| WASHINGTON | For violation of rules. | R. S. 1904, Sec. 8521. |
| WISCONSIN | Forfeiture of 5 days for 1st offense; 10 days for 2nd offense; 20 days for subsequent offenses. | R. S. 1889, Sec. 4928. |
| WYOMING | For violation of rules. | R. S. 1910, C. 41, Secs. 523-4. |

(b) *Good conduct is rewarded by special favor.*

(A) When permitted:

| | | |
|----------|---|--------------------------------|
| ARKANSAS | Tobacco not exceeding one pound per month. | R. S. 1904, Sec. 5920. |
| | | |
| MARYLAND | Good conduct to be reported officially to the Board. Not to include hope of pardon. | R. S. 1904, Art. 27, Sec. 593. |
| | | |

(B) When forfeited:

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|--------|---|----------------------|
| NEVADA | Loss of outdoor privilege is the maximum punishment for prisoners employed on road work | Laws of 1911, C. 71. |
|--------|---|----------------------|

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|---------------|---|------------------------------|
| NEW HAMPSHIRE | Warden, with consent of governor and council, may offer suitable encouragement and indulgences to convicts distinguishing themselves by obedience, industry and faithfulness. | R. S. 1901, C. 285, Sec. 15. |
|---------------|---|------------------------------|

| | | |
|------|---|------------------------|
| OHIO | Board of Managers of Reformatory to arrange a system of marks or otherwise to determine credit earned by prisoner, as to increased privileges or release from control. Prisoner to learn standing once a month. | R. S. 1910, Sec. 2159. |
|------|---|------------------------|

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|--------------|------------------------------|---------------------------------|
| PENNSYLVANIA | Tobacco to a limited extent. | R. S. 1907, Page 3494, Sec. 45. |
|--------------|------------------------------|---------------------------------|

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|--------------|---------------------------------------|-----------------------|
| SOUTH DAKOTA | Moderate allowance of tea or tobacco. | R. S. 1910, Sec. 676. |
|--------------|---------------------------------------|-----------------------|

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|-----------|---|---|
| TENNESSEE | Moderate amount of chewing tobacco to convicts accustomed to use of same. | R. S. 1896, Title 7, Art. 4, Sec. 7534. |
|-----------|---|---|

| | (A) When permitted: | | (B) When forfeited: |
|-----------|---|---------------------------------|---------------------|
| WISCONSIN | Moderate allowance of tobacco or tea as a reward for industry or good behavior. | R. S. 1898, Sec. 4902. | |

(c) *Prisoner's grading is the outward expression of his reported rating.*

| | (A) When allowed: | | (B) When forfeited: |
|------------|--|---|---------------------|
| ALABAMA | Convicts graded when hired for mine work; grading permissible for other work. | R. S. 1907, Sec. 6530. | |
| CALIFORNIA | Warden to grade and classify convicts and clothe them so grades may be distinguishable. | Penal Code, 1909, Sec. 1578, P. 5. | |
| IDAHO | Prisoners to be divided into three grades. No one to be paroled until he has served 6 mos. in first grade. Prisoners in second and third grades to be deprived of such privileges as Board directs. | R. S. 1908, Part 2, Title 10, Sec. 8264. | |
| ILLINOIS | First class, corrigible, likely to observe the laws, and maintain themselves by honest industry after discharge; second class incorrigible but competent to labor; third class incorrigible and so incompetent as to seriously interfere with the work and discipline of the penitentiary. | R. S. 1909, C. 108, Sec. 78. | |
| LOUISIANA | Board to make rules for grading and classifying the prisoners according to most modern and enlightened system of reformation. | Laws of 1900, No. 70, Sec. 6. | |

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|--|--------------------------------------|---------------------|--|-----------------------------|
| MASSACHUSETTS | According to conduct, industry and diligence in study. | R. S. 1902, C. 225, Sec. 15. | | | |
| MICHIGAN | First class corrigible; second class incorrigible but competent to labor; third grade incorrigible and incompetent. | R. S. 1897, Sec. 2103. | MICHIGAN | Reduction to lower grade for misconduct. | R. S. 1897, C. 75, Sec. 24. |
| MISSISSIPPI | First class convicts, male and female, over 18 and under 55. | R. S. 1906, C. 22, Sec. 844. | | | |
| NEVADA | First grade, those appearing corrigible. Second grade, those appearing incorrigible but competent to work. Third grade, those appearing incompetent and incorrigible. Garb of first grade, one color throughout. Garb of second grade, prison stripes. Garb of third grade, trousers of prison stripes and red shirts. | R. S. 1912, Sec. 7583. | | | |
| NEW YORK | First grade, corrigible and likely to observe laws. Second grade, incorrigible, but competent and not likely to interfere seriously with prison discipline. Third grade, incorrigible and incompetent. Superintendent of state prisons to make promotions and reductions from one grade to another. | Prison Law, 1909, C. 47, Sec. 148-9. | | | |
| OHIO | Grading for employment, etc. | R. S. 1910, Div. 4, C. 2, Sec. 2159. | | | |

| (A) When permitted: | | (B) When forfeited: |
|---------------------|---|---|
| TEXAS | Prison Commission to classify all prisoners. First class—first offenders; second class—less corrigible but content to work; third class—appearing incorrigible. Prisoners to be promoted and reduced from one grade to another. Uniforms of first two grades not stripes. Special privileges to different grades. | R. S. 1911, C. 28, Sec. 1609. |
| UTAH | Board to classify prisoners. First grade—those appearing corrigible; second grade—incorrigibles who are competent and not likely to interfere with productiveness of labor. Third grade—incorrigibles and incompetents who will interfere with labor. Promotion and reduction from one grade to another. | R. S. 1907, Title 74, C. 10, Sec. 2242. |

(d) *Reward of money wage, the use of which is regulated so as to increase moral incentive.*

| (A) When permitted: | | (L) When forfeited: |
|---------------------|--|------------------------|
| CALIFORNIA | County court may decree that prisoners work on roads; Board to allow wife or children or guardians of latter not exceeding \$1.50 for each day's labor. | Laws of 1911, C. 379. |
| COLORADO | Earnings, after cost of maintenance and retention is deducted, to be given to family or dependents, or if there be none such, accumulated until time of discharge. | R. S. 1908, Sec. 4882. |

| (A) When permitted: | | (B) When forfeited: | |
|---------------------|---|------------------------------|--|
| | County prisoners, one-half net earnings after the deduction of expenses for guarding, to be paid dependents likely to become a public charge. | Laws of 1911, C. 130. | |
| ILLINOIS | In no case shall earnings exceed 10 per cent. of the earnings of the penitentiary or reformatory. Earnings may be used for family or to purchase books, etc., and may be bequeathed by will. | R. S. 1909, C. 108, Sec. 91. | ILLINOIS Violation of rules causes forfeiture of 50 cents for each day of good time lost. |
| | | | R. S. 1909, C. 108, Sec. 91. |
| KANSAS | Five per cent. of each day's earnings—earnings being computed at 75 cents. | R. S. 1909, Sec. 8588. | KANSAS For violation of rules warden or directors may forfeit the whole or any part of convict's earnings. |
| | Reformatory prisoners, first grade 3 cents per day; second grade 2 cents per day. Earnings funded until release. | R. S. 1909, Sec. 8643. | |
| | Convict may cause earnings, in excess of earnings for one year, to be sent to family or expended in such way as warden approves. | R. S. 1909, Sec. 8589. | |
| KENTUCKY | Board to place to credit of prisoner such amount of average per capita earnings as Board deems just—earnings not to exceed 20 per cent. of average per capita earnings. Earnings may go to family or be paid prisoner, but 25 per cent. must be funded until release. | Laws of 1910, C. 15. | KENTUCKY Warden by way of punishment with approval of Board, may cancel or distribute to family such portion of earnings as he deems best. |
| | | | Laws of 1910, C. 15. |

(A) When permitted:

(B) When forfeited:

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| LOUISIANA | Convicts on roads or farms; first class \$5 to \$15 per month; second class \$2 to \$10 per month. | R. S. 1904, Page 1313, Sec. 8. |
| | | |
| MAINE | County prisoners—Commissioners send order weekly upon treasury for number of days' work done by prisoner—earnings for family. | Laws of 1911, C. 144. |
| | Any person awaiting sentence in jail where labor is provided shall receive such sum as in the judgment of the county commissioners he has earned. | R. S. 1903, C. 82, Sec. 42. |
| MARYLAND | Earnings of prisoner in House of Correction may be sent to family. | R. S. 1904, Art. 27, Sec. 473. |
| MASSACHUSETTS | In cases of desertion and non-support, the court imposing sentence may if he finds destitution amongst the dependents order that 50 cents for each day's hard labor performed by the prisoner be paid for their relief. | Laws of 1911, C. 456, Sec. 8. |
| MISSISSIPPI | County convicts; first class from \$5 to \$15 per month; second class from \$2 to \$10 per month. Board may designate higher wages on account of the skill in individual cases. | R. S. 1906, C. 22, Sec. 845. |

| (A) When permitted: | | (B) When forfeited: | |
|---------------------|--|---|--|
| MISSOURI | Five per cent of daily earnings to be set aside at end of quarter; warden to keep accurate account of number of days' work done by prisoner; sum of \$15 must accumulate for each prisoner after release from penitentiary unless the 5 per cent amount to less; balance may be used for family, provided warden ascertains it is destitute, or for personal necessities not provided by the institution. All earnings of life prisoners go to family; gross earnings of life prisoner without family go to institution. | R. S. 1909, Art. 19, Secs. 1618-19-20. | |
| NEVADA | Twenty-five cents a day to convicts engaged in road work. | Laws of 1911, C. 71. | NEVADA |
| NEW HAMPSHIRE | County convicts at end of sentence receive 25 per cent of amount of their labor; sheriff to keep itemized account showing earnings and expenses. | R. S. 1901, C. 283, Sec. 17. | Laws of 1911, C. 71. |
| NEW YORK | Compensation not to exceed 10 per cent of the earnings of the prisoner to be distributed among the prisoners; agent and warden to grade compensation, basing it on pecuniary value of work and on willingness, industry and good conduct. | Prison Law 1909, C. 47, Art. 6, Sec. 185. | NEW YORK |
| | | | When prisoner forfeits good time he forfeits 50 cents per day. |
| | | | R. S. 1909, C. 43, Art. 9, Sec. 185. |

(A) When permitted:

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| | Earnings may be used for family or to buy books, instruments and instruction not supplied by institution; they may not be used for food, clothing or ornament. | Prison Law 1909, C. 47, Sec. 187. |
| NORTH CAROLINA | One dollar allowed for every ten days of good time earned. Money may be sent to family if prisoner desires. Directors to make regulations for reasonable amount of money to be given convict as reward for good conduct. | R. S. 1908, C. 116, Secs. 5402-3. |
| NORTH DAKOTA | Money reward may be given convict who surpasses the average inmates in good behavior, diligence, in study, labor or otherwise, at discretion of governor, upon recommendation of Board of Trustees. | R. S. 1905, Sec. 10358. |
| OHIO | Board may credit prisoners with such part of earnings, not exceeding 20 per cent of receipts, as seems equitable and just, taking into consideration character and nature of crime and deportment. Funds may be paid prisoner or family, according to judgment of Board. At least 25 per cent must be kept for prisoner on release. Life prisoners receive at most 5 cents per day. | R. S. 1910, C. 2, Sec. 2208. |

(B) When forfeited:

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| OHIO | Board may use judgment as to cancelling earnings. | R. S. 1910, Sec. 2164. |
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(A) When permitted:

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| | Board of Managers of penitentiary to which prisoner is sentenced under Employers' Liability Law to pay him 40 cents per working day during period of confinement. | Laws of 1911, Sec. 13019. |
| OREGON | Fifty cents per merit mark allowed to each convict on discharge. | R. S. 1910, C. 4516. |
| PENNSYLVANIA | Quarterly wages equal to amount of earnings, fixed from time to time by authorities, from which board, lodging and cost of trial shall be deducted. Balance paid dependents or funded until release. | R. S. 1907, Page 3487, Sec. 4. |
| RHODE ISLAND | Board may, on discharge, pay convict sum of money not exceeding one-tenth of his actual earnings; in case of sickness Board may also pay one-tenth average earnings of convict labor. In no case is sum to be less than \$5.00. | R. S. 1909, C. 360, Sec. 42. |
| SOUTH DAKOTA | Money reward may be given convict who surpasses the average inmates in good behavior, diligence, in study, labor or otherwise, at discretion of governor, upon recommendation of Board of Trustees. | R. S., 1905, C. 17 Sec. 699. |

(B) When forfeited:

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| OREGON | Money credits subjected to forfeiture of the cost price of tools and materials which have been injured or wasted through carelessness or neglect of convict. | R. S. 1910, Sec. 4516. |
|--------|--|------------------------|

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|---|----------------------------------|---------------------|---|--------------------------------|
| UTAH | Unmarried prisoners not exceeding 10 per cent of earnings on discharge. | R. S. 1907, Title 57, Sec. 2260. | VERMONT | Loss of \$1.00 for each mo. in which convict commits misdemeanor. | R. S. 1906, C. 261, Sec. 6088. |
| | Married prisoners not exceeding 25 per cent to go to families. If they have no dependents they are credited as unmarried. | | | | |
| VERMONT | If poor and needy, prisoner to be paid on discharge, \$1 for each day's work during sentence. Payment not to exceed \$100. | R. S. 1906, C. 261, Sec. 6088. | | | |
| WISCONSIN | For extra good conduct Board may allow money compensation. | R. S. 1889, Sec. 4942. | | | |
| WYOMING | Prisoners in the discretion of the Commission receive a graded compensation, in no case more than 10 per cent of earnings of institution. Surplus earnings go to family, are never to be used in buying commissary, but the balance paid on release subject to draft. | Laws of 1911, C. 61. | WYOMING | Fines as a substitute for punishment, not to exceed 50 cents a day. | Laws of 1911, C. 61. |

(c) *Reward of wage for overtime work.*

| (A) When permitted: | | | (B) When forfeited: | | |
|---------------------|---|-------------------------------|---------------------|--|--|
| ALABAMA | After performance of daily task; manner prescribed by Board; proceeds disposed of as Board shall provide by rule. | Laws of 1907, Sec. 6531. | | | |
| DELAWARE | Earnings may go to family, be used to purchase articles permitted in the prison, or be funded until discharge. | Laws of 1898, C. 247, Sec. 5. | | | |

(A) When permitted:

MICHIGAN Prisoners working on public account may receive wages not to exceed 10 per cent of the profits realized upon actual collections from the sale of the product of the plant.

Laws of
1907,
No. 291.

Wages are paid convicts in the wisdom of the Board; a limit of 15 cents a day is set.

Laws of
1911,
No. 239.

MISSOURI

Convict is tasked for reasonable amount and allowed wage for overtime at rate allowed state. If on any day convict cannot accomplish full task no deduction shall be made from any over work performed on any other day. Overtime pay may be drawn for purchase of books, etc., to be purchased by warden or chaplain at lowest cash price without commission. Inspectors may upon recommendation of warden at end of each month place to credit of convict not guilty of misdemeanor and who has lost no time during month such limited amount as will encourage a more cheerful performance of work, subject to same rules as applied to over work.

R. S.
1909,
Sec.
1623.

(B) When forfeited:

| (A) When permitted: | | (B) When forfeited: |
|---------------------|--|--|
| VIRGINIA | Convicts to be tasked; a reasonable amount, determined by superintendent, to be paid on discharge, or to family, or to be used for provisions and other articles selected from a standing list and charged to convict at cost. | R. S. 1904, Title 55, Sec. 4173. |

(b) *Reward of assistance to prisoner's family.*

| (A) When permitted: | | (B) When forfeited: |
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| MICHIGAN | Managers of Detroit House of Correction and State Prisons to pay over to superintendents of poor of city or county in which wife and children of prisoners live, \$1.50 per week for each child under 15. | Acts of 1907, No. 144. |
| MINNESOTA | Reformatory Board may make provision for moderate assistance to families of convicts to be paid from current expense fund of institution. | R. S. 1905, C. 105, Sec. 5459. |
| MISSOURI | County court to appropriate from county treasury amount not exceeding \$12,000 per year for the partial support of widows or wives of prisoners who are poor and have children under 14; such allowance not to exceed \$10 per month if there be one child; \$15 per month if more; children | Acts of 1910, H. B. 626. |

(A) When permitted:

to live with mother who would otherwise be obliged to live away from them. Woman must be mentally, morally and physically able to bring up her children.

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| NEW JERSEY | Prisoners' families dependent on charity relieved by Commissioner of Charities at the rate of 50 cents for every day the prisoner works. The relief fund limited to 5 per cent of the value of all goods produced. | Laws of 1911, S. B. 150. |
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(B) When forfeited:

4. General Education.

(a) Prison schools are provided:

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| ARKANSAS | Chaplain to establish a night school for young convicts and instruct them in studies arranged by board. | R. S. 1904, C. 123, Sec. 5893. |
| GEORGIA | Reformatory prisoners to receive instruction in elementary branches and manual training. | R. S. 1911, Sec. 1243. |
| ILLINOIS | Chaplain to give instruction in such English branches as warden feels will be of benefit between 6 and 9 P. M. daily. | R. S. 1909, Page 1670, Sec. 23. |
| INDIANA | Instruction of an educational and technical nature as shall be to the best interest of the inmates. Trade schools at the reformatory. | R. S. 1908, Sec. 9844. R. S. 1908, Sec. 9905. |
| IOWA | Chaplain to give instruction in ordinary branches of English to illiterate convicts. Reformatory prisoners to be employed in trades conducive to intellectual and moral development. | R. S. 1897, Title 26, C. 2, Sec. 5671. R. S. 1897, Sec. 2706. |
| KANSAS | Chaplain to teach convalescents and others whose task is performed within less than required hours of labor and who wish to avail themselves of his assistance in acquiring an elementary education. | R. S. 1909, C. 108, Sec. 8577. |
| KENTUCKY | Convicts to be trained in common branches of English and in some trade, industry or handicraft; common schools and trade schools to be maintained for the purpose. | Laws of 1910, C. 15. |

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| MAINE | Inspectors to establish rules for the instruction of convicts. | R. S. 1903, Title 12, C. 141, Sec. 11. |
| MASSACHUSETTS | \$2,000.00 appropriation annually for prison schools. | R. S. 1902, C. 224, Sec. 73. |
| MICHIGAN | A school to be maintained in each prison. | R. S. 1897, Sec. 2134. |
| NEW JERSEY | Board of inspectors to equip school and have control and supervision thereof, to appoint teachers who must have certificate prescribed by State Board of Education, and must not be inmates of the prison. Studies to be the same as those in public schools. | R. S. 1910, Page 4927, Secs. 69-76. |
| | Moral instructors to devote their entire time to work. | R. S. 1910, Page 4914, Sec. 7. |
| NEW YORK | Under supervision of the chaplain. | R. S. 1909, C. 47, Sec. 139. |
| TENNESSEE | Chaplain to instruct those under 16 and older if they desire 2 hours per week. | R. S. 1896, Title 7, C. 2, Sec. 7509. |
| TEXAS | Prisoners to be taught elementary branches of English. | R. S. 1911, Sec. 6203. |
| VERMONT | Educational instruction to be given. | R. S. 1906, Title 33, C. 261, Secs. 6072-73. |
| UTAH | Schools to be conducted in the prison. | R. S. 1907, C. 10, Sec. 2279. |
| WISCONSIN | Chaplain to conduct school for three hours one day per week. | R. S. 1898, C. 201, Sec. 4905. |
| | (b) <i>Prison Libraries are provided:</i> | |
| ALABAMA | Appropriation of \$500.00 per year for books. | R. S. 1907, C. 191, Sec. 6539. |
| ARKANSAS | Chaplain in charge of library. | R. S. 1904, C. 123, Sec. 5893. |
| CONNECTICUT | Appropriation of \$500 annually for library purposes. | R. S. 1902, C. 176, Sec. 2922. |
| COLORADO | Warden to act as librarian. | R. S. 1908, C. 108, Sec. 4847. |
| IDAHO | Appropriation of \$75 per annum; warden to purchase books and report to Governor annually the effect upon conduct, mental and moral improvement of the prisoners. | R. S. 1908, Part 3, Title 2, Sec. 8510. |
| ILLINOIS | Chaplain to take charge of library. | R. S. 1909, Page 1670, Sec. 23. |
| MAINE | Appropriation of \$50 annually; warden to take charge of library. | R. S. 1903, C. 141, Sec. 51. |
| MICHIGAN | Library subject to instruction of board. | R. S. 1897, Sec. 2135. |
| TEXAS | Chaplain to act as librarian. | R. S. 1911, Title 104, C. 2, Sec. 6203. |
| UTAH | As board directs. | R. S. 1907, C. 10, Sec. 2280. |
| VERMONT | Board of Library Commissioners to have care and supervision of suitable libraries in penal and charitable institutions; they may expend \$500 for this purpose in 1911, and \$200 a year thereafter. | Laws of 1910, No. 235. |

WISCONSIN

Chaplain in charge of library.

R. S. 1898, C.
201, Sec. 4905.(c) *Industrial Training provided:*

GEORGIA

Reformatory prisoners to receive instruction in elementary branches and manual training.

R. S. 1911, Sec.
1243.

INDIANA

Instruction of an educational and technical nature as shall be to the best interest of the inmates.

R. S. 1908, Sec.
9844.

Trade schools at the Reformatory.

R. S. 1908, Sec.
9905.

IOWA

Reformatory prisoners to be employed in trades conducive to intellectual and moral development.

R. S. 1897, Sec.
2706.

KANSAS

Trades which will enable prisoners to earn a living on release.

R. S. 1909, Sec.
8595.

KENTUCKY

Convicts to be trained in common branches of English and in some trade, industry or handicraft; common schools and trade schools to be maintained for the purpose.

Laws of 1910, C.
15.

MINNESOTA

Trades for which prisoner seems best suited.

R. S. 1905, C.
105, Sec. 5458.

OHIO

Superintendent of reformatory authorized to expend not more than 5 per cent of gross earnings of inmates for equipment of industrial training schools which will fit for self-support upon release.

R. S. 1910, Div.
4, C. 1, Sec.
2137.

VII.

WHO CAN SET HIM FREE?

As the result of good conduct prisoners may be allowed limited freedom or parole through action taken by:

1. *The Governor.*

ALABAMA

Governor may, when he thinks best, authorize the discharge of any convict from custody and suspend the sentence of such convict without granting a pardon, and prescribe the terms upon which a convict so paroled shall have his sentence suspended. Upon the failure of any convict to observe the conditions of his parole, to be determined by the governor, the governor shall have authority to direct the re-arrest and return of such convict to custody and thereupon convict shall be required to carry out sentence of court as though no parole had been granted him.

Crim. Code, 1907,
C. 265, Secs.
7515-16.

MISSOURI

The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons.¹

Const. 1875, Art.
5, Sec. 8.

OKLAHOMA

The Governor has power to grant paroles and reprieves.

Const. 1907, Art.
6, Sec. 10.

2. *The Parole Board.*

ARIZONA

The parole board is composed of the governor, warden of state prison, state auditor, attorney general, and the physician of the prison. The warden is president and a parole clerk is appointed by the governor. Any prisoner who has served his minimum sentence, and any prisoner serving a fixed term who has a clean record for the time served, is eligible for parole. Where a paroled prisoner has reverted or is about to revert to criminal habits, any member of the board may issue a

Laws 1912, C. 46.

¹ Under this constitutional provision Governor Hadley has established a parole system, which has been extended to young and first offenders, and is entirely within the discretion of the Governor assisted by the Pardon Attorney.

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| | warrant for him. He may be finally discharged whenever the board decides he is worthy of discharge. | |
| CALIFORNIA | The parole board is appointed by the Governor and includes the wardens of the two state prisons. Governor can revoke parole. Prisoners who have a clear record for six months and against whom there are no charges pending and life termers after seven years are eligible for parole. Prisoners are finally discharged at expiration of maximum parole or may be discharged sooner by board. | Laws 1901, P. 82. |
| COLORADO | Parole board is composed of Governor and four members appointed by him. Prisoners are eligible for parole at the expiration of minimum sentence. They are finally discharged after service of maximum sentence, either in prison or on parole. | R. S. 1908, C. 35, Secs. 2039-42. |
| CONNECTICUT | The parole board consists of the board of directors, the superintendent and warden. Prisoners who have served a minimum term of at least twelve months are eligible for parole. They are finally discharged by expiration of maximum sentence or unanimous vote of all members of board at any stated meeting. | R. S. 1902, Title 7, Secs. 1535-41. |
| IDAHO | The parole board consists of the board of pardons and the warden. Prisoners are eligible for parole who have not previously been sentenced for a felony and who have served $\frac{1}{3}$ of full term, not reckoning good time. All persons to be graded and none paroled until they have served 6 months in highest grade. Life prisoners may not be paroled. | R. S. 1908, Part 2, Title 10, Sec. 8259. |
| INDIANA | Parole board consists of warden, three directors, chaplain and physician. Prisoners who have served minimum sentence are eligible for parole. They are finally discharged when board is satisfied they will live orderly if freed from parole restrictions. | R. S. 1908, Sec. 9870. |
| ILLINOIS | The parole board is the same as the board of pardons with the warden as an advisory member. Prisoners are eligible for parole when they have served at least 11 months unless old offenders, when 21 months must be served. When prisoner has served parole of 12 months board makes order for final discharge, which when approved by Governor is final. | R. S. 1909, C. 38, Sec. 501. |
| IOWA | Parole board consists of three citizens, not more than two of one political party and one a duly licensed attorney at law, appointed by Governor with | R. S. 1907, Title 26, C. 2, Sec. 5718, a 18, 19, 20. |

advice of Senate. Prisoners are eligible for parole when they have served 11 months, except when maximum is 2 years or less, then 6 months. They are finally discharged when they have served 12 months parole acceptably and if likely to be reliable and trustworthy in future.

KANSAS

Parole board is composed of prison board with warden as member and secretary. Prisoners are eligible for parole when they have served minimum with 6 months of clear prison record except when committed for murder in the first or second degree, or serving third term.

R. S. 1909, C. 97,
Sec. 6841.

KENTUCKY

Parole board consists of board of four penitentiary commissioners. Prisoners are eligible for parole who have served minimum sentence and life prisoners who have served 5 years. All must have good behavior record for 9 months.

Laws 1910, C. 16.

MASSACHUSETTS

Parole board consists of five prison commissioners appointed by Governor with consent of council. Prisoner must be paroled at expiration of minimum sentence if record has been perfect; otherwise, date is set by commissioners. Prisoners are finally discharged automatically at expiration of maximum.

1911, C. 451.

MICHIGAN

Parole board consists of Governor and advisory board of four. In some instances of Governor alone. Warden makes recommendation. Convicts are eligible for parole at expiration of minimum sentence, except third termers whose period of parole must not exceed four years. Final discharge comes at expiration of parole if there has been faithful observance of requirements. The period is fixed at time of parole.

Laws 1905, C.
184.

MINNESOTA

The board of parole consists of three members—the president of the board of control, the warden of the prison and a citizen appointed by the governor with consent of senate. All prisoners are eligible for parole at discretion of board, except life prisoners; life prisoners may be paroled after thirty-five years less commutation for good behavior. Prisoners are finally discharged by Governor upon recommendation by board.

Laws 1911, C.
298.

MONTANA

The state board of prison commissioners acts as board of parole, upon recommendation of Governor. First offenders for felony are eligible for parole after they have served one-half of term, not reckoning good time.

R. S. 1907, Part
2, Title 12, C.
13, Secs. 9573-
9575.

Convicts serving time sentence may be paroled after they have served twelve and one-half years where term was more than 25 years, and life prisoners having served 25 years, less commutation for good behavior. The governor, upon recommendation of board, finally discharges convicts who have fulfilled requirements.

NEBRASKA

The parole board consists of the state prison board appointed by the Governor—one member to be a practicing physician and one a practicing attorney. Prisoners are eligible for parole when they have served their minimum sentence. Six months faithful observance of parole requirements is reported by secretary of board which issues certificate which is sent to Governor. Upon recommendation of board Governor finally discharges prisoner.

Laws 1911, C.
184.

NEW HAMPSHIRE

Governor and council act as parole board. Prisoner is paroled automatically at end of minimum sentence if obedient to rules; otherwise governor and council determine. Prisoner is finally discharged by Governor at expiration of maximum sentence.

Laws 1909, C.
120.

NEW JERSEY

Board of inspectors of prison act as parole board with approval of governor. Prisoners whose minimum sentence is about to expire are eligible for parole. Final discharge comes after faithful observance of conditions of parole until maximum has expired. Prisoners on parole can earn commutation and thus have maximum expire sooner.

Laws 1911, C.
191.

NEW MEXICO

The board of parole is composed of the prison board and the superintendent of the penitentiary. The Governor must approve recommendations. All prisoners who have served minimum except those having served two previous terms in any penitentiary. Superintendent, after prisoner has served not less than six months of his parole acceptably, reports to board to recommend to trial judge who certifies to Governor, who finally discharges him.

Laws 1909, C. 32.

NEW YORK

Board of control consists of superintendent of prisons and two members appointed by the Governor with consent of Senate. Board to devise system of marking persons, a certain number of marks to be necessary before release on parole. Prisoners never before convicted and who have served minimum sentence eligible for parole. Final discharge when board deems it not incompatible with the welfare of society.

Laws 1909, C. 47.
Art. 8, Sec. 10.

NORTH DAKOTA

The parole board is a board of experts consisting of the warden, prison physician, a prison chaplain and one other person designated by the board of control. Prisoners are eligible for parole when they have served their minimum term; employment must be secured and employer recommended by judge of county court. Final discharge comes on expiration of maximum sentence. Warden gives discharge.

R. S. 1909, C.
173.

OHIO

Parole board composed of eight members—a president and two other lay members, a physician, a fiscal supervisor, a mechanical engineer, a secretary and a parole secretary. Prisoners are eligible for parole when they are recommended by the warden and chaplain, have served a minimum of not less than one year, if their conduct in prison has been of the first grade for six months prior to application and if they have never been convicted of felony before. In case of life prisoners they must have served twenty-five years. An agreement, from a reliable property owner certified from the auditor of the county that he is a property owner and that he will give prisoner employment on release, is necessary. Final discharge is given by board of administration and the warden to convict who has certificate showing faithful compliance with parole agreement.

R. S. 1910, Secs.
2141-44, 2167-75.

PENNSYLVANIA

Board of parole consists of board of 5 prison inspectors from each penitentiary, who report to the board of pardons—consisting of lieutenant-governor, secretary of the commonwealth, attorney-general and secretary of internal affairs, three of whom must recommend to the governor for final action. Prisoners are eligible for parole when they have served a minimum sentence and are in good standing. Application can be filed any time within three months of the expiration of minimum term. Final discharge comes at expiration of maximum sentence or the board of inspectors may sooner recommend absolute pardon to the board of pardons which recommends to governor.

R. S. 1909, pp.
5329-31.

SOUTH DAKOTA

The parole board is composed of the board of charities and corrections and one parole officer. Prisoner may petition for parole after expiration of minimum sentence. Final discharge is by order of warden and board of charities at expiration of parole.

Laws 1911, C.
198.

TEXAS

Board of parole consists of three prison commissioners requiring the approval of the governor. Prisoners are eligible for parole when they have served twelve months with good conduct and have completed minimum sentence. Final discharge comes automatically at the expiration of time originally given in sentence but commission has power to grant absolute discharge in deserving cases before the expiration thereof.

Laws 1911, C. 43.

WISCONSIN

The state board of control acts as parole board. Prisoners in state prison are eligible for parole when they have served one half of sentence. Life termers can only be considered when they have served 30 years less commutation which is 16 years and 3 months. No convict previously convicted of felony is eligible. Final discharge comes automatically at the expiration of sentence, less commutation for good behavior.

Laws 1907, C. 110.

WYOMING

The pardon board acts as board of parole. The governor issues parole upon its recommendation. No parole can be granted to any prisoner who has returned from parole as a delinquent; who has served a previous term in any penitentiary, who has not served the minimum term fixed by law, or the minimum term fixed at time of sentence by the trial judge; who has violated any of the rules of the penitentiary within six months prior to his application, or who has committed an assault with a deadly weapon upon any officer, employee or other convict in the state penitentiary. Final discharge comes automatically at expiration of maximum sentence, or sooner if commutation for good behavior reduces maximum.

R. S. 1910, C. 42, Secs. 530-531.

Manumission from penal servitude is at the hand of the state executive, assisted in a number of states by the advice of a special board designated for that purpose though the council and senate participate in certain states while in still others the responsibility has been taken from the governor and invested in the legislature, or in Pardon Boards.

1. *The Pardoning Power exercised by the Governor (except in cases of treason and impeachment) in:*

ARIZONA

Const. 1910, Art. 5, Sec. 5.

| | | |
|----------------|---|--|
| ARKANSAS | | Const. 1874, Art. 6, Sec. 18. R. S. 1904, C. 49, Secs. 2565-75. Const. 1879, Art. 7. |
| CALIFORNIA | No pardon to convicts who have been twice convicted except upon written recommendation of a majority of judges of the supreme court. | |
| COLORADO | | Const. 1876, Art. 4, Sec. 7. |
| DELAWARE | | Const. 1831, Art. 3, Sec. 9. |
| ILLINOIS | | Const. 1870, Art. 5, Sec. 13. |
| IOWA | | Const. 1857, Art. 4, Sec. 16. |
| KANSAS | | Const. 1859, Art. 1, Sec. 7. |
| KENTUCKY | Governor must file statement of reasons for pardon which shall be open to public inspection. | Const. 1891, Sec. 77, R. S. 1909, Sec. 3836. |
| MARYLAND | Before granting pardon Governor must publish a notice in one or more newspapers of the application and the date on or after which the decision will be given. | Const. 1867, Art. 2, Sec. 20. |
| MICHIGAN | | Const. 1850, Art. 5, Sec. 11. |
| MISSOURI | | Const. 1875, Art. 5, Sec. 8. |
| NEW HAMPSHIRE | Except for offenses for which a person is convicted before the senate. | Const. 1902, Art. 51. |
| NEW MEXICO | | Const. 1910, Art. 5, Sec. 6. |
| NEW YORK | | Const. 1894, Art. 4, Sec. 5. |
| NORTH CAROLINA | | Const. 1876, Art. 3, Sec. 6. |
| OHIO | | Const. 1851, Art. 3, Sec. 11. |
| OREGON | | Const. 1857, Art. 5, Sec. 14. |
| TENNESSEE | | Const. 1870, Art. 3, Sec. 6. |
| TEXAS | | Const. 1876, Art. 4, Sec. 11. |
| VIRGINIA | Except in cases where the prosecution has been carried on by the House of Delegates. | Const. 1902, Art. 5, Sec. 73. |
| VERMONT | | Const. 1793, C. 2, Sec. 11. |
| WASHINGTON | | Const. 1889, Art. 3, Secs. 9, 11. |
| WEST VIRGINIA | Except in cases where prosecution has been carried on by House of Delegates. | Const. 1872, Art. 7, Sec. 11. |
| WISCONSIN | | Const. 1848, Art. 5, Sec. 6. R. S. 1898, Sec. 4861. |
| WYOMING | | Const. 1889, Art. 4, Sec. 5. |

2. *The Pardoning Power exercised by the Governor and Board of Pardons (except in cases of treason or impeachment) in:*

| | | |
|----------------|--|--|
| ALABAMA | Board consists of attorney-general, secretary of state and state auditor. Board hears all cases in open session and gives opinion thereon in writing. | Const. 1901, Sec. 124. |
| FLORIDA | Board consists of justices of supreme court and attorney-general. | Const. 1885, Art. 4, Sec. 12. |
| GEORGIA | Prison commission constitutes board and investigates every case deserving clemency. | Const. 1877, Art. 5, P. 12. R. S. 1911, Sec. 1222. |
| IDAHO | Board consists of governor, secretary of state and attorney-general. Open hearings on all cases and public notice in newspapers. | Const. 1889, Art. 4, Sec. 17. R. S. 1908, C. 13, Sec. 8251. |
| INDIANA | Board to be constituted by general assembly and to be composed of officers of the law. | Const. 1851, Art. 5, Sec. 143. |
| LOUISIANA | Board of control. Not more than one out of five life convicts to be pardoned in one year. | Acts of 1890, No. 112. |
| MINNESOTA | Board consists of attorney-general and chief justice of the supreme court. | Const. 1857, Art. 5, Sec. 4. |
| MONTANA | Board consists of secretary of state, attorney-general and state auditor. Publication at least twice before pardon is granted of reasons therefor. | R. S. 1907, Sec. 9556. |
| NEBRASKA | State prison board advisory board of Pardons. | Const. 1875, Art. 5, Sec. 13. R. S. 1911, Sec. 2743. |
| NEVADA | Governor, justices of supreme court and attorney-general constitute the board of pardons. | Const. 1864, Art. 5, Sec. 14. R. S. 1912, Sec. 7623. |
| NEW JERSEY | Governor, chancellor and the six judges of the court of appeals form board of pardons. | Const. 1844, Art. 5, Sec. 10. |
| NORTH DAKOTA | The attorney-general, chief justice of supreme court and two qualified electors. Pardons must be unanimous. | R. S. 1906, Secs. 10240-10243. |
| OKLAHOMA | State superintendent of public instruction, president of board of agriculture and state auditor. Board holds hearing and within 20 days files with secretary of state its decision in writing. | Laws of 1908, C. 62. |
| PENNSYLVANIA | Lieutenant-governor, secretary of the commonwealth, attorney-general and secretary of internal affairs. Board makes recommendations in writing after full hearing and due public notice. | Const. 1873, Art. 4, Sec. 9. |
| SOUTH CAROLINA | Board to be chosen by general assembly. | Const. 1895, Art. 4, Sec. 11. |
| SOUTH DAKOTA | Board consists of presiding judge, secretary of state and attorney-general. Pardons not permitted in cases of capital punishment, imprisonment for life or for a longer term than two years or a fine exceeding \$200. | Const. 1889, Art. 4, Sec. 5. |

3. *The Pardoning Power exercised by the Governor and Board of Pardons (except in cases of treason and impeachment) in:*

| | | |
|------|--|-------------------------------|
| UTAH | Governor, justices of the supreme court, and attorney-general. No pardon except after full public hearing of which public notice has been given. | Const. 1896, Art. 7, Sec. 12. |
|------|--|-------------------------------|

4. *The Pardoning Power exercised by the Governor and council (except in cases of treason and impeachment) in:*

| | | |
|---------------|--|-------------------------------|
| MAINE | | Const. 1820, Art. 5, Sec. 11. |
| MASSACHUSETTS | | Const. 1780, C. 2, Sec. 8. |

5. *The Pardoning Power exercised by the Governor and Senate (except in cases of treason and impeachment) in:*

| | | |
|-------------|---|--------------------------------|
| IOWA | In cases of murder of first degree. | R. S. 1897, C. 49, Sec. 5626. |
| MISSISSIPPI | No pardon until applicant shall have published for 30 days in a newspaper or elsewhere in county where crime was committed his petition and reasons for pardon. | Const. 1910, Art. 5, Sec. 124. |

6. *The Pardoning Power exercised by the Legislature in:*

| | | |
|--------------|---|-------------------------------|
| CONNECTICUT | Governor may only grant reprieves until end of next session of the legislature. | Const. 1882, Art. 4, Sec. 10. |
| RHODE ISLAND | Governor may only grant reprieves until end of next session of the legislature. | Const. 1842, Art. 7, Sec. 4. |

VIII

SPECIFIC DISABILITIES CAUSED BY PRISON SENTENCE

A prison sentence usually involves certain specific disabilities, such as (1) Loss of citizenship, (2) Loss of power of procreation through vasectomy, (3) Loss of marital rights, (4) Loss of presumption of innocence in subsequent prosecutions for crime, (5) Loss of rights to ordinary burial of corpse.

1. Loss of Citizenship.*

| (A) How rights are lost: | | (B) How rights may be regained: | |
|--------------------------|---|---------------------------------|---|
| ALABAMA | Const. 1901, Sec. 182. | ALABAMA | Specifically expressed in pardon. Const. 1901, Sec. 124. |
| ARKANSAS | R. S. 1904, C. 57, Sec. 2768. | ARKANSAS | When pardoned. R. S. 1904, C. 57, Sec. 2768. |
| CALIFORNIA | Const. 1879, Art. 2, Sec. 1. | CALIFORNIA | Aspecial executive act may restore a convict to citizenship but does not remove the infamy and disability. Const. 1849. Art. 7. |
| COLORADO | R. S. 1908, C. 43, Sec. 2148. | COLORADO | On presenting to the Governor a certificate from the warden that the entire time of sentence has been passed without violation of rules. R. S. 1908, C. 108, Sec. 4876. |

* Loss of citizenship does not take place:

| | | |
|---------------|---|---|
| ARIZONA | For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or while a student at any institution of learning, or while kept at any almshouse or other asylum at public expense, or while confined in any public jail or prison. | Const. 1910, Art. 7, Sec. 3. |
| MICHIGAN | | Const. 1850, Art. 7, Sec. 5. |
| NEW HAMPSHIRE | | R. S. 1901, C. 31, Sec. 9. |
| PENNSYLVANIA | | Const. 1873, Art. 8, Sec. 13, Par. 148. |
| VERMONT | | R. S. 1906, Title 3, C. 7, Sec. 73. |

| (A) How rights are lost : | | (B) How rights may be regained : | |
|---------------------------|---|----------------------------------|--|
| CONNECTICUT | Const. 1818, Art. 6, Sec. 3. | | |
| DELAWARE | R. S. 1898-99, C. 36, Sec. 9. | DELAWARE | Laws of 1898, C. 247, Sec. 5. |
| DISTRICT OF COLUMBIA | R. S. 1911, Secs. 215 and 261. | | |
| FLORIDA | R. S. 1906, P. 1, Title 4, Art. 1, Sec. 170. | FLORIDA | When par- doned. R. S., 1906, Div. 5, Title 2, C. 1, Sec. 4077. |
| GEORGIA | R. S. 1911, Sec. 1077. | GEORGIA | When par- doned. R. S. 1911, Sec. 1077. |
| IDAHO | R. S. 1908, P. 1, Title 15, Sec. 7239. | IDAHO | By governor. R. S. 1908, Part 2, Title 10, Sec. 8257. |
| ILLINOIS | R. S. 1909, Page 967, Sec. 70. | ILLINOIS | When par- doned or after expiration of term of disfran- chisement. R. S. 1909, Page 1676, Sec. 49. |
| INDIANA | General As- sembly has power to deprive any one con- victed of crime of right of suf- rage. Const. 1851, Sec. 89. | | |
| IOWA | Const. 1857, Art. 2. | IOWA | By governor. R. S. 1897, Sec. 5706. |
| KANSAS | R. S. 1909, Sec. 2803. | KANSAS | Reformatory prisoners. R. S. 1909, Sec. 8636. |
| | | | First offenders. R. S. 1909, Sec. 2805. |
| KENTUCKY | R. S. 1908, C. 41, Sec. 1439. | | |

| (A) How rights are lost : | | (B) How rights may be regained : | |
|---------------------------|--|----------------------------------|--|
| LOUISIANA | Const. 1898, Art. 202. | LOUISIANA | Only if pardoned with expressed restoration of franchise. Const. 1898, Art. 202. |
| MAINE | Const. 1819, Art. 2, Sec. 1. | | |
| MARYLAND | Const. 1867, Art. 1, Sec. 2. | | |
| MASSACHUSETTS | Const. 1779, Amdt. 3. | | |
| MINNESOTA | Const. 1858, Art. 4, Sec. 15. | | |
| MISSISSIPPI | R. S. 1906, C. 119, Sec. 4121. | | |
| MISSOURI | Const. 1875, Art. 8. | MISSOURI | In cases of first conviction civil disabilities are removed at end of five years and convict restored to full rights. R. S. 1909, Art. 19 Sec. 1656. |
| MONTANA | Const. 1889, Art. 9, Sec. 2. | MONTANA | Governor has power to restore civil rights after due cause is shown. R. S. 1907, Sec. 9572. |
| NEBRASKA | Const. 1875, Art. 7, Sec. 2. | NEBRASKA | By governor. R. S. 1911, Part 2, C. 24, Sec. 2414. |
| NEVADA | Const. 1910, Art. 2, Sec. 1. | NEVADA | If so stated in the instrument of pardon. R. S. 1912, Sec. 7625. |
| NEW JERSEY | Const. 1897, Art. 2. | NEW JERSEY | If pardoned. R. S. 1910, Page 2100. |
| NEW MEXICO | R. S. 1897, Sec. 1672. | NEW MEXICO | Convict who passes entire period of his sentence without any violation of rules entitled to certificate from Board of Penitentiary Commissioners on presentation of which Governor may restore citizenship. Laws of 1899, C. 1, Sec. 2. |

(A) How rights are lost:

| | |
|-------------------|--|
| NEW YORK | R. S. 1909, Art. 46, Sec. 510. |
| NORTH CAROLINA | R. S. 1908, C. 90, Sec. 4315. |
| NORTH DAKOTA | Const. 1889, Amdts, Art. 2. R. S. 1910, Sec. 12390. |
| OHIO | |
| OKLAHOMA | Const. 1907, Art. 3, Sec. 1. |
| OREGON | Const. 1859, Art. 2. |
| RHODE ISLAND. | R. S. 1909, Title 37, C. 354, Sec. 62. |
| SOUTH CAROLINA | Const. 1895, Art. 2, Sec. 6. |
| SOUTH DAKOTA | R. S. 1907, C. 142, Sec. 74. |
| TENNESSEE | R. S. 1896, Title 6, C. 2, Sec. 1170. |

(B) How rights may be regained:

| | | |
|-------------------|---|--|
| NORTH CAROLINA | Petition may be filed with superior court any time four years after date of conviction. Applicant must prove by five respectable citizens that his reputation for truth and honesty has been good during intervening years. | R. S. 1908, Secs. 2675, 2680. |
| NORTH DAKOTA | If pardoned. | R. S. 1905, Sec. 10251. |
| OHIO | Convict who serves his entire time without violation of rules, on presentation to Governor of certificate of good conduct furnished by warden. | R. S. 1910, Title 4, C. 2, Sec. 2161. |
| OREGON | If pardoned. | Const. 1859, Art. 2, Sec. 3. R. S. 1910, Sec. 2380. |
| RHODE ISLAND. | Only by act of the general assembly. | R. S. 1909, Title 37, C. 354, Sec. 62. |
| SOUTH CAROLINA | If pardoned. | Const. 1895, Art. 2, Sec. 6. |
| SOUTH DAKOTA | Convict with clean record for good conduct. | R. S. 1910, Sec. 686. |
| TENNESSEE | If pardoned. | R. S. 1896, Title 4, C. 18, Sec. 7235. |

| (A) How rights are lost: | | (B) How rights may be regained: | |
|--------------------------|--|---------------------------------|---|
| TEXAS | Const. 1876, Art. 6, Sec. 1. | TEXAS | If pardoned. R. S. 1911, Title 36, C. 3, Sec. 2938. |
| UTAH | Const. 1896, Art. 4, Sec. 6. | | |
| VIRGINIA | Const. 1902, Art. 2, Sec. 23. | | |
| WASHINGTON | Const. 1889, Art. 6, Sec. 3. | | |
| WEST VIRGINIA | Const. 1872, Art. 4, Sec. 1. | | |
| WISCONSIN | Const. 1848, Art. 3, Sec. 2. | WISCONSIN | If pardoned. Const. 1848, Art. 3, Sec. 2. |
| WYOMING | Const. 1889, Art. 6, Sec. 6. | WYOMING | If pardoned. R. S. 1910, C. 395, Sec. 6030. |

2. *Loss of power of procreation (Vasectomy authorized):*

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|-------------|---|-----------------------|
| CONNECTICUT | When convict is determined to be incapable of producing offspring mentally, morally and physically sound. | Laws of 1909, C. 209. |
| INDIANA | Skilled surgeons, in conjunction with chief physician, to examine the mental and physical condition of such inmates as are recommended by the institution physician and board of managers; and if this committee of experts deem procreation inadvisable and there is no probability of improvement in the mental condition it shall be lawful for the surgeons to perform the operation. | Laws of 1907, C. 215. |
| NEW JERSEY | Governor appoints one surgeon and one neurologist to act in conjunction with the commissioner of charities and corrections and to be known as "Board of Examiners of Feeble-minded." This board determines whether or not operation shall be performed on feeble-minded, epileptics, rapists, certain criminals and other defectives. | Acts of 1911, C. 190. |

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| NEW YORK | Governor appoints one surgeon, one neurologist and one practitioner of medicine, each with at least 10 years' experience, to be known as the "Board of Examiners of Feeble-minded, criminal and other defectives." To examine into the mental and physical condition, and the record and family history of the feeble-minded, etc., and to prevent procreation if in their judgment defective children would be produced. | Laws of 1912. Art. 19. |
| WASHINGTON | When adjudged guilty of carnal abuse of female under 10 years or of rape. | Acts of 1909, C. 249. |
| 3. <i>Loss of Marital Rights:</i> | | |
| ALABAMA | Imprisonment for two years, the sentence being for seven years or longer, a ground for divorce. | R. S. 1907, C. 76, Sec. 3793. |
| ARIZONA | No suit sustained until one year after conviction. Husband must not be convicted on testimony of wife or wife on that of husband. | R. S. 1901, Title 45, C. 4, Sec. 3113. |
| ARKANSAS | Conviction of either party of felony or other infamous crime, a ground for divorce. | R. S. 1904, C. 54, Sec. 2672. |
| CALIFORNIA | Conviction for felony a ground for divorce. | Civil Code, 1909, C. 2, Art. 2, Sec. 92. |
| COLORADO | Conviction for felony a ground for divorce. | R. S. 1908, C. 41, Sec. 2112. |
| CONNECTICUT | Imprisonment for life. Imprisonment in the state prison for crime involving a violation of conjugal duty, a ground for divorce. | R. S. 1902, Title 43, C. 254, Sec. 4551. |
| DELAWARE | Conviction after marriage, whether crime was committed before or after marriage, a ground for divorce. | R. S. 1893, C. 75, Sec. 1. |
| GEORGIA | Imprisonment for two years or longer, a ground for divorce. | R. S. 1911, Title 3, C. 1, Art. 1, Sec. 2945. |
| IDAHO | Conviction of felony, a ground for divorce. | R. S. 1902, Title 2, C. 2, Art. 2, Sec. 2647. |
| ILLINOIS | Conviction for felony or other infamous crime, a ground for divorce. | R. S. 1909, C. 40, Sec. 1. |
| INDIANA | Conviction after marriage, a ground for divorce. | R. S. 1908, Art. 37, Sec. 1067. |
| IOWA | Conviction after marriage, a ground for divorce. | R. S. 1897, Title 16, C. 3, Sec. 3174. |
| KANSAS | Conviction after marriage, a ground for divorce. | R. S. 1909, C. 95, Sec. 6258. |
| KENTUCKY | Conviction for felony in or out of state, a ground for divorce. | R. S. 1909, C. 66, Art. 2, Sec. 2117. |
| LOUISIANA | Conviction for infamous crime, a ground for divorce. | R. S. 1904, Sec. 1190. |
| MAINE | Life imprisonment dissolves bonds of marriage without action. | R. S. 1903, C. 62, Sec. 1. |

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| MASSACHUSETTS | Imprisonment for life or five years or longer is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1902, C. 152, Sec. 2. |
| MICHIGAN | Imprisonment for life dissolves marriage or is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1897, C. 232, Sec. 8620. |
| MINNESOTA | Conviction after marriage is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1905, C. 71, Sec. 3574. |
| MISSISSIPPI | Sentence to penitentiary without pardon before being confined is ground for divorce. | R. S. 1906, C. 37, Sec. 1669. |
| MISSOURI | Conviction after marriage, or before marriage and ignorance of other party, is ground for divorce. | R. S. 1909, C. 22, Art. 3, Sec. 2370. |
| MONTANA | Conviction for felony is ground for divorce. | R. S. 1907, Sec. 3643. |
| NEBRASKA | Imprisonment for three years or more is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1911, Criminal Code, P. 1, C. 14, Sec. 5328. |
| NEVADA | Conviction for felony or infamous crime is ground for divorce. | R. S. 1912, Sec. 5838. |
| NEW HAMPSHIRE | Conviction for crime punishable in the state by imprisonment for one year or more; actual imprisonment under these conditions is ground for divorce. | R. S. 1901, C. 175, Sec. 5. |
| NEW JERSEY | Imprisonment after abandonment to be regarded as continued desertion and ground for divorce. | R. S. 1910, Page 2041, Sec. 31. |
| NEW YORK | Imprisonment for life a ground for divorce. | R. S. 1909, C. 19, Art. 2, Sec. 6. |
| NORTH DAKOTA | Conviction for felony a ground for divorce. | R. S. 1905, Civil Code, C. 5, Sec. 4049. |
| OHIO | Petition for divorce must be filed during the imprisonment of the adverse party. | R. S. 1910, Div. 7, C. 3, Sec. 11979. |
| OKLAHOMA | Imprisonment subsequent to marriage a ground for divorce. | R. S. 1903, C. 66, Art. 28, Sec. 4832. |
| OREGON | Conviction for felony a ground for divorce. | R. S. 1910, Title 6, C. 8, Sec. 507. |
| PENNSYLVANIA | Provided application be made for divorce by the husband or wife of party convicted, conviction for felony is ground for divorce. | R. S. 1903, Page 1235, Sec. 7, Par. 2. |
| RHODE ISLAND | In case either party is for crime deemed to be, or treated as if, civilly dead, it is a ground for divorce. | R. S. 1909, C. 247, Sec. 1. |
| SOUTH DAKOTA | Conviction for felony is a ground for divorce. | R. S. 1910, P. 3, Title 1, C. 1, Art. 2, Sec. 67. |
| TENNESSEE | Conviction for felony and sentence to confinement in the penitentiary is a ground for divorce. | R. S. 1896, Title 4, C. 1, Art. 2, Sec. 4201. |
| TEXAS | Conviction after marriage is ground for divorce; no suit to be sustained until 12 months after final judgment and provided the governor has not par- | R. S. 1911, Title 68, C. 4, Sec. 4631. |

doned the convict; or the wife been convicted on the testimony of the husband or the husband on that of the wife.

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| UTAH | Conviction for felony is ground for divorce. | R. S. 1907, Title 35, C. 3, Sec. 1208. |
| VERMONT | Imprisonment for life or for three years or more and actual confinement at the time is ground for divorce. | R. S. 1906, Title 17, C. 148, Sec. 3068. |
| VIRGINIA | Conviction for felony is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1904, Title 28, C. 101, Sec. 2257. |
| WASHINGTON | If complaint be filed during term of imprisonment, conviction for felony is ground for divorce. | R. S. 1910, Title 6, C. 12, Sec. 982. |
| WEST VIRGINIA | Conviction for felony is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1906, C. 64, Sec. 2921. |
| WISCONSIN | Imprisonment for three years or more is ground for divorce. Pardon granted after divorce does not restore conjugal rights. | R. S. 1898, C. 109, Sec. 2356. |
| | Imprisonment for life dissolves marriage without judgment of divorce. Pardon does not restore conjugal rights. | R. S. 1898, Sec. 2355. |
| WYOMING | Conviction for felony is ground for divorce. Pardon does not restore conjugal rights. | R. S. 1910, C. 266, Sec. 3924. |

3. *The assumption of innocence is destroyed by means of a criminal record:*

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| ALABAMA | Superintendent to keep records of convicts, including name, age, place of nativity, county wherein convicted, nature of crime and period of imprisonment, together with height, complexion and color of hair and eyes, etc. | R. S. 1907, C. 191, Sec. 6517. |
| ARIZONA | The secretary of the board of control to keep records of all convicts, including name, nature of crime, county and court wherein sentenced, nativity, degree of education, with an accurate description of person and whether previously confined or not. | R. S. 1901, Title 56, Sec. 3575. |
| ARKANSAS | Superintendent to keep records of all convicts, including names (aliases as well), crime, age, color, height, complexion, color of hair and eyes, marks on person, nativity and number of previous convictions. | R. S. 1904, C. 123, Sec. 5872. |
| CALIFORNIA | Warden to keep records of all convicts, including name, crime, period of sentence, nativity, degree of education, an accurate description of person, and whether previously confined or not. | R. S. 1909, Penal Code, Title I, Sec. 1578. |
| COLORADO | Board to keep records of all convicts, including age, term of imprisonment, offense, place of conviction, and pursuits and habits of life. | R. S. 1908, C. 108, Sec. 4839. |

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| FLORIDA | Superintendent and physician to keep records of convicts, including name, height, age, place of nativity, color, color of hair and eyes, crime for which convicted and length of sentence. | R. S. 1906, Art. 6, Title 4, Sec. 4137. |
| GEORGIA | Prison commissioners to keep records of name, crime, sentence, age, sex, height, weight and apparent physical condition of each convict. | R. S. 1911, Sec. 1219. |
| ILLINOIS | Warden to keep records of all convicts, including counties wherein convicted, crime, nature and duration of sentence, former trade, employment or occupation, habits, color, age, place of nativity, degree of education and description of person. | R. S. 1909, C. 108, Sec. 18. |
| IOWA | Board of control to keep records of all convicts. | R. S. 1907, Title 26, C. 2, Sec. 5718 a 12. |
| KANSAS | Warden to keep records as to name, age, nativity, nationality and such other facts as can be obtained as to parentage, education, occupation, and early social influences; also weight, stature and health record. | R. S. 1909, C. 97, Sec. 6840. |
| KENTUCKY | Prison clerk to keep records of convicts, including name, crime, period of sentence, nativity, an accurate description of person and record of former sentences. | R. S. 1909, C. 97, Sec. 3801. |
| LOUISIANA | Clerk of the penitentiary to keep register of names of convicts, crime, height, age, sex, color of hair and eyes, and date of discharge. Records to be open to public inspection. | R. S. 1904, Sec. 2854. |
| MAINE | Prisoners who have been convicted of a felony, if it be deemed advisable for the purpose of subsequent identification, may be measured and described in accordance with the Bertillon method and their photographs and finger-prints taken. | Laws 1911, C. 5. |
| MARYLAND | Record of every convict to be kept, including description of person and criminal history and photographs. | R. S. 1904, Art. 27, Sec. 584. |
| MASSACHUSETTS | Convicts convicted of felony shall be measured and described with the Bertillon methods for the identification of criminals. | R. S. 1902, C. 225, Sec. 18. |
| MICHIGAN | Warden to cause record of all prisoners to be kept, including a description and measurement by the Bertillon system, or such other system as may be deemed desirable for the identification of criminals; also criminal history and photograph to be kept. Records not to be available to the public. | R. S. 1897, Sec. 2147. |
| MISSISSIPPI | Clerk to keep register of all convicts, including name (aliases), sex, race, nationality, place of birth, age, color of hair, complexion, height, weight, dis- | R. S. 1906, C. 107, Sec. 3628. |

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| | tinguishing marks, if any, crime, term of sentence and whether or not a dangerous criminal. | |
| MISSOURI | Convicts to be examined in the presence of as many overseers as possible in order that they may become acquainted with person and countenance. Records to be kept of name, height, apparent or alleged age, place of nativity, trade, complexion, color of hair and eyes and length of foot, together with any natural or accidental marks which may serve to identify a convict. If a convict can write, his signature shall be written under the description of his person. | R. S. 1909, C. 19, Art. 19, Sec. 1631. |
| MONTANA | Warden to keep record of name, age, sex, occupation, place of birth, crime and date of incarceration and expiration of sentence of all convicts. | R. S. 1907, Part 3, Title 1, Sec. 9722. |
| NEBRASKA | Warden to keep records of all convicts, including name, age, nativity, nationality, with such other facts as can be ascertained of parentage, education, occupation, and early social influences. Physician to keep records of name, height, stature, family history, together with health record. | Laws of 1911, C. 184. |
| NEVADA | Warden shall keep records of name, age, sex, occupation, place of birth, crime, date of incarceration and expiration of sentence. | R. S. 1912, Sec. 7565. |
| NEW HAMPSHIRE | Prisoners may, if it be deemed advisable, be measured and described in accordance with the Bertillon method for the identification of criminals, and may have their photographs and fingerprints taken. | Laws 1907, C. 24. |
| NEW JERSEY | Prisoners to be examined by principal keeper, clerk and as many deputy-keepers as can conveniently attend in order that they may become acquainted with countenance. Record to be kept of name, height, apparent or alleged age, place of nativity, trade, complexion, color of hair and eyes, length of feet, together with such natural and other marks and peculiarities of feature as will serve to identify him. If convict can write he shall sign his name under such description. | R. S. 1910, Page 4912, Art. 7. |
| NEW YORK | Superintendent of state prisons to cause all prisoners to be measured by the Bertillon system for identification of criminals. | Prison Laws, 1909, Sec. 21. |
| NORTH DAKOTA | Warden to keep records of all convicts, including name, age, sex, color, height, nationality and each and every other fact, characteristic and condition, natural or artificial, that may in any way tend to aid in identification of prisoner. | R. S. 1905, C. 17, Sec. 10354. |

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| OHIO | Physician to keep record of convicts, including nationality or race, weight, stature, former occupation and family history, together with health record. | R. S. 1910, Div. 3, C. 2, Sec. 2194. |
| OREGON | Superintendent to establish a rogues' gallery, in which shall be placed the pictures of all persons confined in the penitentiary. | R. S. 1910, Title 33, C. 14, Sec. 4522. |
| PENNSYLVANIA | Warden shall keep records of all convicts, including name, height, apparent or alleged age, place of nativity, trade, complexion, color of hair and eyes, length of feet, and accurate measurements, together with natural or accidental marks which may serve to identify. If convict can write his signature shall be written under description. | R. S. 1907, Page 3494, Sec. 43. |
| RHODE ISLAND | Prisoners may in discretion of board be measured and described in accordance with Bertillon system. Board to see record of measurements, etc., is kept and to keep duplicate record in its own office. | R. S. 1909, Title 38, C. 360, Sec. 18. |
| TENNESSEE | Warden to keep records of all convicts, including name, nativity, nationality, all facts that can be obtained about parentage and early social influences which may tend to indicate constitutional and acquired criminal defects and tendencies of prisoner. | R. S. 1903, Sec. 7517. |
| UTAH | Board to have records of all convicts kept, including parentage and early social influences, and to base on these an estimate of character and probable plan of treatment. | R. S. 1907, Title 72, C. 10, Sec. 2245. |
| VIRGINIA | Clerk to keep a register describing all prisoners. | R. S. 1904, Title 55, C. 202, Sec. 4114. |
| WASHINGTON | Names of prisoners and crimes to be recorded. State auditor to keep a public record of all convictions. | R. S. 1910, Title 78, C. 2, Secs. 8542-4. |
| WEST VIRGINIA | Clerk to keep record describing all prisoners. | R. S. 1906, C. 4657. |
| WISCONSIN | Clerk shall keep record of all convicts received, discharged, pardoned or dead and such other matters as may be necessary in statistics of this kind. | R. S. 1898, C. 201, Sec. 4902. |
| WYOMING | State board of charities and reform to keep records of all prisoners, including name, date of sentence, age, sex, color, religion and nativity, nature of crime and ability to read or write. | R. S. 1910, C. 41, Sec. 520. |

4. *Use of dead body for scientific purposes:*¹

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| ARKANSAS | The body of a convict who has suffered the death penalty may be buried in the penitentiary burial ground, or on application of any respectable surgeons, | R. S. 1908, C. 35, Sec. 2668. |
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¹ This is not permitted in Wyoming.

it may be delivered to them for dissection, unless claimed by some relative or friend desiring to give it Christian burial.

CALIFORNIA

Any sheriff or keeper of a county jail or state prison must surrender the dead bodies of such persons as are required to be buried at public expense, to any physician or surgeon, to be used by him for the advancement of science. If such person during his last illness request to be buried, or if within 24 hours some person claiming to be of kindred require the body to be buried, such body shall be buried.

Political Code,
1909, Title 7,
C. 4, Sec. 3094

COLORADO

The officers having control of any almshouse, prison, etc., may surrender the dead bodies of such persons as must be buried at public expense to any licensed physician of the state to be by him used for the advancement of science. If the deceased during his last illness requested to be buried, or if within 24 hours after his or her death any relative or friend require body for burial, body shall be buried. After having been used for scientific purposes body must be buried.

R. S. 1908, C.
127, Secs. 6072-
75.

The body of any convict who has been executed shall be buried in the ordinary manner at expense of state, unless claimed by relative or friend, desiring to give it Christian burial.

R. S. 1908, C. 35,
Sec. 2036.

CONNECTICUT

The bodies of convicts who die in the state prison shall, if unclaimed for a period of 24 hours, be at the disposal of the professors of anatomy and surgery in the medical institution of Yale University, to be used for the purpose of advancing medical science in this state and shall be subject to their order.

R. S. 1902, Title
36, C. 243, Sec.
4432.

ILLINOIS

Superintendent of penitentiary in whose custody is the body of any deceased person required to be buried at public expense shall give permission to remove body to any physician or surgeon or to any medical college or school upon offer to remove free of charge, after notice has been given to relatives who may wish to bury body, and provided further that any medical college that shall receive the bodies of deceased persons for purposes of scientific study, shall furnish the same to students of medicine and surgery at a price not exceeding \$5.00 for each and every deceased body so furnished.

R. S. 1909, C. 91,
Sec. 1.

INDIANA

It shall be the duty of any officer in charge of a prison, etc., having in charge the dead bodies of any person

R. S. 1908, C. 55,
Sec. 6131.

not claimed by relatives or legal representatives, and which may be required to be buried at public expense, unless the person has died of a contagious disease, to deliver body to anatomical board, unless body shall be claimed within 24 hours after death.

IOWA

Superintendent of any penitentiary may, with consent of relatives or friends, if any are known and without such consent if not known, deliver to any medical college or school, or any physician in the state for purposes of scientific study, the remains of any deceased person in his charge, unless such deceased person during his last illness expressed a desire that his body be buried. If such a body so delivered over is subsequently claimed by any friend or relative, the same shall be at once delivered to such party. The person receiving the body shall decently bury the remains after they have been used for scientific purposes, and failure to do so shall be a misdemeanor.

R. S. 1907, Title
24, C. 9, Sec.
4946.

KANSAS

It shall be lawful for the faculty of any regularly-organized medical college in the state authorized to confer the degree of doctor of medicine, to claim and receive the dead body of any criminal which would otherwise be buried in the potter's field; such body to be used within the state for the advancement of medical science and instruction of students. The president and secretary of the college must give bond that body is only required for scientific purposes within the State of Kansas. The remains after serving such purpose must receive decent burial.

R. S. 1909, C. 75,
Secs. 4878-9-80.

KENTUCKY

It shall be lawful for the professor of any medical college or school which is incorporated under the laws of the state to secure from the superintendent or warden, any unclaimed body, after relatives and friends have been notified, and three days have elapsed without action on their part. The professor is to have body embalmed and preserve the same for 30 days without dissecting it. During the 30 days body shall be delivered to friends on request. After such body has been examined as herein provided it shall be buried at expense of college.

R. S. 1909, Sec.
2645.

MAINE

Officers of any prison having charge over dead bodies required to be buried at public expense, shall deliver same to board composed of professors of anatomy and surgery in medical schools of state, who shall remove such bodies

R. S. 1903, C. 17,
Secs. 3-6.

| | | |
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| | to be used within the state for the advancement of medical education. If family or friends claim body it shall be decently buried when no longer needed for scientific purposes. | |
| MARYLAND | The bodies of deceased convicts may be claimed by their friends or devoted to scientific examination at the medical schools or buried in the potter's field. | R. S. 1904, Art. 27, Sec. 623. |
| MICHIGAN | Officer in charge of any prison having in charge the dead body of any convict, not claimed and which must be buried at public expense, shall deliver such body within 36 hours after death to the demonstrator of anatomy of a college of medicine. After bodies have been used for scientific purposes they shall be decently buried. | R. S. 1897, Sec. 5897. |
| MISSOURI | Officer in charge of any prison shall give over the bodies of any convicts which are unclaimed by relatives and would otherwise have to be buried at public expense, to the state board for the disposition of human bodies, which is composed of the professors of anatomy of all incorporated schools. | R. S. 1909, C. 78, Art. 3, Secs. 8324-30. |
| NEBRASKA | Warden of state prisons, etc., to deliver the bodies of convicts, with consent of relatives, if they are known and without if not known, to medical colleges for purposes of scientific study. | R. S. 1911, Sec. 9899. |
| NEW HAMPSHIRE | It shall be the duty of the keeper of any state prison or jail, to notify physicians or surgeons who have previously made request in writing, whenever the body of any person would have to be buried at public expense. The person receiving such a body must give bond that it will only be used in the pursuit of science, and after the use allowed by law will be decently buried. If body is claimed by relatives or friends within 36 hours after death it shall be given them. | R. S. 1901, C. 136, Secs. 1-4. |
| NEW JERSEY | Officers of prison, etc., shall deliver to duly incorporated pathological association bodies of dead convicts which require to be buried at public expense, unless claimed by relatives. | R. S. 1910, Page 3325, Sec. 12. |
| NORTH CAROLINA | Bodies of all persons imprisoned at hard labor for violation of criminal laws of state, shall be delivered to the professors of anatomy of the medical schools of the state, provided bodies are not claimed by relatives and that convict was serving a sentence for felony. | R. S. 1908, C. 89, Sec. 4288. |
| NORTH DAKOTA | Superintendent shall give over to any duly licensed physician the bodies of convicts, after notice has been given to relatives, and 36 hours allowed for them | R. S. 1905, C. 24, Secs. 2079-81. |

* 111844

to remove bodies in. All bodies so used are to be decently buried or cremated.

OHIO

Warden of penitentiary in whose charge are unclaimed bodies which must otherwise be buried at public expense shall hold such bodies not less than 36 hours and notify a professor of a college which by its charter is empowered to teach anatomy. After bodies have been subjected to examination they shall be decently buried.

R. S. 1910, Secs.
9984-6.

OREGON

It shall be lawful for professors and teachers in medical colleges and schools in this state, or for any medical and surgical association, or regular physician or surgeon, to claim and receive the body of any person executed pursuant to sentence of law, and of all persons dying in the penitentiary while under sentence of law for crime, to be used for the purpose of medical and surgical study, provided said body shall not have been interred or claimed by relatives within 24 hours after death, and that person has not expressed a distinct wish for burial. Bodies must be decently buried after having been used for scientific purposes.

R. S. 1910, C. 6,
Secs. 4747-9.

PENNSYLVANIA

Officer of any prison, etc., in charge of dead body of a convict which must otherwise be buried at public expense, is requested to notify state board of anatomy and permit it to use body for scientific purposes.

R. S. 1903, Page
320, Secs. 1-7.

SOUTH CAROLINA

Officers of any prison, jail, etc., having control of a human body which is required to be buried at public expense, and that of any person upon whom the sentence of death has been executed under the law, shall notify the board for distribution of human bodies for scientific purposes. No notice shall be given of bodies claimed by relatives. After bodies have been used for scientific purposes they shall be decently buried.

Civil Code, 1912,
C. 19, Art. 18,
Secs. 929-34.

SOUTH DAKOTA

Persons in charge of unclaimed dead body of a convict to give notice to department of medicine of the state university, within 24 hours after receipt of body, specifying in such notice the probable cause of death. Such bodies shall be embalmed and held at university for 60 days during which time any friend of deceased requesting body for burial shall receive it. Bodies must be decently buried after having been used for scientific purposes.

Code of Criminal Procedure,
1910, Sec. 682.

TENNESSEE

The bodies of dead criminals are delivered to physicians pursuant to the law.

R. S. 1896, Part
4, C. 8, Art. 3,
Sec. 6775.

TEXAS

Officers in charge of prisons, jails, etc., to deliver to anatomical board of Texas dead human bodies required to be buried at public expense, unless claimed by relatives or friends or if deceased died of contagious disease, except tuberculosis or syphilis. Effort must be made to find relatives who must claim body within 24 hours. In case a body is claimed by relatives within 10 days after being delivered to an institution it shall be delivered to them for burial without cost.

R. S. 1911, Title 90, C. 3, Secs. 5756-63.

UTAH

It shall be the duty of any person into whose charge may come the unclaimed dead body of a convict, which would otherwise have to be buried at public expense, to give notice to the dean of the university within 24 hours after the receipt of the body, specifying probable cause of death. All bodies received at the university shall be promptly embalmed, and shall be preserved for not less than 60 days during which time any relative or friend of deceased making request for body for burial shall receive it. After the 60 days bodies may be used for scientific purposes and must then be decently buried or cremated.

R. S. 1907, Title 74, C. 11, Secs. 2320-4.

VERMONT

Superintendents of public institutions shall deliver over to a practicing physician who has applied in writing, bodies which must otherwise be buried at public expense. No such body shall be so delivered if deceased during his last sickness make request for burial, nor if relative, within 48 hours, require body to be buried.

R. S. 1906, Title 31, Sec. 5374.

VIRGINIA

Officers of prisons, jails, etc., shall deliver to the board for distribution of dead human bodies, bodies of convicts who must otherwise be buried at public expense, also bodies of convicts who have suffered the death sentence, unless such bodies are claimed by relatives for burial. After having been used for scientific purposes bodies must be decently buried.

R. S. 1904, Title 24, Secs. 1776-81.

WASHINGTON

Officer in charge of state prison, jail, etc., must surrender the bodies of such persons as would have to be buried at public expense to any physician or surgeon, to be used by him for the advancement of science. If deceased, during his last sickness, requests to be buried, or if, within 48 hours after death relatives or friends request body for burial, body must be buried without dissection.

R. S. 1910, C. 67, Secs. 8409-11.

WEST VIRGINIA

Officers in charge of prisons, jails, etc., having in their charge bodies of convicts who must otherwise be buried at public expense, shall surrender them, on requisition, to the anatomical board of West Virginia, unless friends or relatives claim body for burial, or make affidavit that they are unable to bear expense of funeral and desire body to be buried at public expense.

R. S. 1906, C. 45,
Secs. 1725-30.

WISCONSIN

Public officials having charge of body of deceased prisoner, which must otherwise be buried at public expense, shall promptly notify relatives or friends of deceased. If body be not claimed within 48 hours after death, it shall be placed at disposal of demonstrator of anatomy for scientific purposes, unless in his last sickness convict requested to be buried. Bodies used for scientific purposes must afterwards be decently buried.

R. S. 1898, C. 58,
Secs. 1437-8.

INDEX

ALABAMA.

What is the status of the prisoner ?

The property of the state 4

Why is he confined ?

Working off a fine and costs . . . 11

Serving fixed sentences 13

Awaiting capital punishment . . 15

How may he be punished ?

Cruel and unusual punishments pro-

hibited 17

Shackles and chains permitted . . 19

Corporal punishment permitted . . 21

How may he be worked ?

Leasing to individuals for work out-

side institution permitted 24

Leasing to individuals for work out-

side institution prohibited . . . 24

Public works 29

Public works prohibited 29

How is he maintained ?

Bunking 47

Food 53

Clothing 57

How is he cared for ?

Provision for health and medical in-

spection 59

Provision for religious teaching . . 64

Reduction of time for good conduct . 66

Time for good conduct forfeited . . 66

Grading of prisoners 78

Wage for overtime permitted . . . 86

Prison libraries 90

Who can set him free ?

The Governor may parole him . . 92

The Governor and Board of Par-

dons may pardon him 99

What specific disabilities are caused

by a prison sentence ?

Citizenship lost 101

Citizenship regained 101

Marital rights lost 106

A criminal record 108

ARIZONA.

Why is he confined ?

Working off a fine and costs . . . 9

Serving an indeterminate sentence . 13

Awaiting capital punishment . . . 15

How may he be punished ?

Cruel and unusual punishments pro-

hibited 17

How may he be worked ?

Public works 30

Hours of labor 46

How is he maintained ?

Food 53

How is he cared for ?

Provision for health and medical in-

spection 59

Provision for religious teaching . . 64

Reduction of time for good conduct . 66

Time for good conduct forfeited . . 66

Who can set him free ?

The Parole Board 92

The Governor may pardon him . . 97

What specific disabilities are caused

by a prison sentence ?

Citizenship not forfeited 105

Marital rights lost 106

A criminal record 108

ARKANSAS.

What is the status of the prisoner ?

The property of the state 4

Why is he confined ?

Working off a fine and costs . . . 11

Serving a fixed sentence 13

Awaiting capital punishment . . . 15

How may he be punished ?

Cruel and unusual punishments pro-

hibited 17

Greater or more severe punishment

than prescribed by board pro-

hibited 23

How may he be worked ?

Leasing to individuals for work out-

side institution permitted 24

Public works 29

State farms; community consump-

tion 37

State factories; community con-

sumption 38

Hours of labor 45

How is he maintained ?

Bunking 47

Food 53

Clothing 57

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 59 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct | 66 |
| Time for good conduct forfeited | 66 |
| Special favors for good conduct allowed | 77 |
| Prison schools | 89 |
| Prison libraries | 90 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Governor may pardon him | 98 |
|---------------------------------------|----|

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 101 |
| Citizenship regained | 101 |
| Marital rights lost | 106 |
| A criminal record | 108 |
| Use of dead body for scientific purposes | 111 |

CALIFORNIA.

What is the status of the prisoner?

| | |
|--|-----|
| The property of the state | 3-4 |
| <i>Why is he confined?</i> | |
| Working off a fine and costs | 6 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 15 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited | 25 |
| State industries; state consumption | 28 |
| Public works | 30 |
| State factories; community consumption | 38 |
| Branding of convict-made goods | 41 |
| Hours of labor | 46 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 47 |
| Food | 53 |
| Clothing | 57 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 60 |
| Reduction of time for good conduct | 67 |
| Time for good conduct forfeited | 67 |
| Grading of prisoners | 78 |
| Wage permitted | 80 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Parole Board | 93 |
| The Governor may pardon him | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 101 |
| Citizenship regained | 101 |
| Marital rights lost | 106 |
| A criminal record | 108 |
| Use of dead body for scientific purposes | 112 |

COLORADO.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|---|----|
| Working off a fine and costs | 9 |
| Serving an indeterminate sentence | 13 |
| Awaiting capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Shackles and chains permitted | 20 |
| Leasing to individuals for work inside institution permitted | 25 |
| Public works | 30 |
| Competition with free labor prohibited | 39 |
| Branding of convict-made goods | 41 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 47 |
|-------------------|----|

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 60 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct | 67 |
| Time for good conduct forfeited | 67 |
| Wage permitted | 80 |
| Prison libraries | 90 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Parole Board | 93 |
| The Governor may pardon him | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 101 |
| Citizenship regained | 101 |
| Marital rights lost | 106 |
| A criminal record | 108 |
| Use of dead body for scientific purposes | 112 |

CONNECTICUT.

Why is he confined?

| | |
|---|----------|
| Working off fines and costs | 5, 9, 12 |
| Serving an indeterminate sentence | 13 |
| Awaiting capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Shackles and chains permitted | 19 |
| Gag, iron mask, etc., prohibited | 21 |
| Corporal punishment permitted | 21 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution permitted | 25 |
| Public works | 30 |
| Manufacture of certain articles prohibited | 44 |
| Hours of labor | 46 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 47 |
| Food | 53 |

How is he cared for?

| | |
|--|----|
| Provision for health and medical inspection. | 60 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct. | 67 |
| Time for good conduct forfeited | 67 |
| Prison libraries. | 90 |

Who can set him free?

| | |
|--|-----|
| The Parole Board. | 93 |
| The Legislature may pardon him | 100 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost. | 101 |
| Power of procreation lost. | 105 |
| Marital rights lost. | 106 |
| Use of dead body for scientific purposes | 112 |

DELAWARE.

Why is he confined?

| | |
|---------------------------------------|----|
| Serving a fixed sentence. | 13 |
| Awaiting capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Solitary confinement permitted | 18 |
| Corporal punishment permitted. | 21 |
| Stocks prohibited. | 23 |

How may he be worked?

| | |
|--|----|
| Public works. | 30 |
| State factories; community consumption | 38 |
| Hours of labor | 45 |

How is he cared for?

| | |
|---|----|
| Bunking | 47 |
| Food | 53 |
| Reduction of time for good conduct. | 67 |
| Time for good conduct forfeited. | 67 |
| Wage for overtime permitted. | 86 |

Who can set him free?

| | |
|--------------------------------------|----|
| The Governor may pardon him. | 98 |
|--------------------------------------|----|

What specific disabilities are caused by a prison sentence?

| | |
|--------------------------------|-----|
| Citizenship lost. | 101 |
| Citizenship regained | 101 |
| Marital rights lost | 106 |

DISTRICT OF COLUMBIA.

Why is he confined?

| | |
|---------------------------------------|----|
| Serving a fixed sentence. | 13 |
| Awaiting capital punishment | 15 |

How may he be worked?

| | |
|-------------------------|----|
| Hours of labor. | 46 |
|-------------------------|----|

How is he maintained?

| | |
|-------------------|----|
| Bunking | 47 |
| Food | 53 |

How is he cared for?

| | |
|--|----|
| Provision for health and medical inspection. | 60 |
|--|----|

What specific disabilities are caused by a prison sentence?

| | |
|---------------------------|-----|
| Citizenship lost. | 101 |
|---------------------------|-----|

FLORIDA.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|--|----|
| Working off a fine and costs | 11 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 15 |

How may he be punished?

| | |
|---|----|
| Cruel and unusual punishments prohibited | 17 |
| Shackles and chains permitted | 20 |
| Reduction of food prohibited | 21 |
| Punishment injurious to mind or body prohibited | 23 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work outside institution permitted | 24 |
| Public works | 30 |
| State farms; community consumption | 37 |
| Hours of labor | 45 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 47 |
| Food | 53 |
| Clothing | 57 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 60 |
| Reduction of time for good conduct. | 68 |
| Time for good conduct forfeited | 68 |

Who can set him free?

| | |
|--|----|
| The Governor and Board of Pardons may pardon him | 99 |
|--|----|

What specific disabilities are caused by a prison sentence?

| | |
|--------------------------------|-----|
| Citizenship lost | 101 |
| Citizenship regained | 101 |
| A criminal record | 109 |

GEORGIA.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

- Why is he confined?*
 Serving a fixed sentence 13
 Awaiting capital punishment . . . 15
- How may he be punished?*
 Cruel and unusual punishments prohibited 17
 Shackles and chains permitted . . . 20
 Corporal punishment permitted . . . 21
 Corporal punishment prohibited . . . 21
- How may he be worked?*
 Leasing to individuals for work inside institution prohibited 25
 Public works 30
 State farms; community consumption 37
 Competition with free labor prohibited 39
 Hours of labor 46
- How is he maintained?*
 Bunking 47
 Food 53
- How is he cared for?*
 Provision for health and medical inspection 60
 Reduction of time for good conduct. 68
 Time for good conduct forfeited . . 68
 Grading of prisoners 78
 Prison libraries 90
- Who can set him free?*
 The Parole Board 93
 The Governor and Board of Pardons may pardon him 99
- What specific disabilities are caused by a prison sentence?*
 Citizenship lost 102
 Citizenship regained 102
 Marital rights lost 106
- ILLINOIS.
- Why is he confined?*
 Working off a fine and costs 8
 Serving an indeterminate sentence. 13
 Awaiting capital punishment . . . 15
- How may he be punished?*
 Cruel and unusual punishments prohibited 17
 Corporal punishment prohibited . . . 21
- How may he be worked?*
 Leasing to individuals for work inside institution prohibited 25
 Public works 30
 State factories; community consumption 38
 Competition with free labor prohibited 39
 Use of machinery prohibited 41
- How is he maintained?*
 Bunking 48
 Food 54
- How is he cared for?*
 Provision for health and medical inspection 60
 Provision for religious teachings . . 64
 Reduction of time for good conduct. 68
 Time for good conduct forfeited . . 68
 Grading of prisoners 78
 Wage permitted 81
 Wage forfeited 81
 Prison schools 89
 Prison libraries 90
- Who can set him free?*
 The Parole Board 93
 The Governor may pardon him . . . 98
- IDAHO.
- Why is he confined?*
 Working off a fine and costs 6
 Serving an indeterminate sentence. 13
 Awaiting capital punishment . . . 15
- How may he be punished?*
 Cruel and unusual punishments prohibited 17
 Solitary confinement permitted . . . 18
 Shackles and chains permitted . . . 20
- How may he be worked?*
 Leasing to individuals for work inside institution permitted 25
 State industries; state consumption. 28
 Public works 30
 Manufacture of goods manufactured by free industries in the state prohibited 41
 Hours of labor 45

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 102 |
| Citizenship regained | 102 |
| Marital rights lost | 106 |
| A criminal record | 109 |
| Use of dead body for scientific purposes | 112 |

INDIANA.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|--|----|
| Working off a fine and costs | 7 |
| Serving an indeterminate sentence | 13 |
| Awaiting capital punishment | 15 |
| Cruel and unusual punishments prohibited | 17 |

How may he be punished?

| | |
|--|----|
| Solitary confinement permitted | 18 |
| Corporal punishment permitted | 22 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution permitted | 25 |
| Leasing to individuals for work inside institution prohibited | 25 |
| State industries: state consumption | 28 |
| Public works | 30 |
| State factories: community consumption | 38 |
| Use of machinery prohibited | 41 |
| Branding of convict-made goods | 42 |
| Manufacture of certain articles prohibited | 44 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 48 |
| Food | 54 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Reduction of time for good conduct | 69 |
| Time for good conduct forfeited | 69 |
| Prison schools | 89 |
| Industrial training | 91 |

Who can set him free?

| | |
|--|----|
| The Parole Board | 93 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 102 |
| Power of procreation lost | 105 |
| Marital rights lost | 106 |
| Use of dead body for scientific purposes | 112 |

IOWA.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|---|----|
| Working off a fine and costs | 9 |
| Serving an indeterminate sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 18 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work outside institution prohibited | 24 |
| Leasing to individuals for work inside institution permitted | 26 |
| Public works | 30 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 48 |
| Food | 54 |
| Clothing | 58 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct | 69 |
| Time for good conduct forfeited | 69 |
| Prison schools | 89 |
| Industrial training | 91 |

Who can set him free?

| | |
|--|-----|
| The Parole Board | 93 |
| The Governor may pardon him | 98 |
| The Governor and Senate may pardon him | 100 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 102 |
| Citizenship regained | 102 |
| Marital rights lost | 106 |
| A criminal record | 109 |
| Use of dead body for scientific purposes | 113 |

KANSAS.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|---|----|
| Working off a fine and costs | 9 |
| Serving an indeterminate sentence | 13 |
| Prohibition of capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 18 |

| | |
|--|----|
| Shackles and chains permitted . . . | 20 |
| Corporal punishment prohibited . . . | 21 |
| Punishment injurious to mind or body prohibited | 23 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work out- side institution prohibited | 24 |
| Leasing to individuals for work in- side institution permitted | 26 |
| Leasing to individuals for work in- side institution prohibited | 25 |
| State industries; state consumption. | 28 |
| Public works | 31 |
| Work injurious to health prohibited. | 44 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 48 |
| Food | 54 |

How is he cared for?

| | |
|--|----|
| Provision for health and medical in- spection | 61 |
| Provision for religious teachings . . | 64 |
| Reduction of time for good conduct. | 69 |
| Time for good conduct forfeited . . | 69 |
| Wage permitted. | 81 |
| Wage forfeited. | 81 |
| Prison schools | 89 |
| Industrial training | 91 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board | 94 |
| The Governor may pardon him . . | 98 |

*What specific disabilities are caused
by a prison sentence?*

| | |
|---|-----|
| Citizenship lost | 102 |
| Citizenship regained | 102 |
| Marital rights lost | 106 |
| A criminal record | 109 |
| Use of dead body for scientific pur- poses | 113 |

KENTUCKY.

What is the status of the prisoner?

| | |
|------------------------------------|---|
| The property of the state. | 4 |
|------------------------------------|---|

Why is he confined?

| | |
|--------------------------------------|----|
| Working off a fine and costs | 10 |
| Serving an indeterminate sentence. | 14 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|---|----|
| Cruel and unusual punishments pro- hibited | 17 |
| Corporal punishment prohibited. . . | 22 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work in- side institution permitted. | 26 |
|--|----|

| | |
|--|----|
| Public works. | 31 |
| Public works prohibited | 29 |
| Branding of convict-made goods . . | 42 |
| Work injurious to health prohibited. | 44 |
| Association with free laborers dur- ing work hours prohibited | 44 |
| Hours of labor | 46 |

How is he maintained?

| | |
|------------------|----|
| Bunking. | 48 |
| Food | 54 |

How is he cared for?

| | |
|--|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching . . | 64 |
| Reduction of time for good conduct. | 69 |
| Wage permitted | 81 |
| Wage forfeited. | 81 |
| Prison schools | 89 |
| Industrial training | 91 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board | 94 |
| The Governor may pardon him . . | 98 |

*What specific disabilities are caused
by a prison sentence?*

| | |
|---|-----|
| Citizenship lost | 102 |
| Marital rights lost. | 106 |
| A criminal record. | 109 |
| Use of dead body for scientific pur- poses | 113 |

LOUISIANA.

Why is he confined?

| | |
|--------------------------------------|--------|
| Working off a fine and costs | 10, 12 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|---|----|
| Cruel and unusual punishments pro- hibited | 17 |
| Solitary confinement permitted . . | 18 |
| Shackles and chains prohibited . . | 19 |
| Corporal punishment permitted . . . | 22 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work out- side institution permitted | 24 |
| Leasing to individuals for work in- side institution prohibited | 26 |
| Public works | 31 |
| State farms; community consump- tion | 38 |
| Branding of convict-made goods . . | 42 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 49 |
| Food | 54 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct | 69 |
| Grading of prisoners | 78 |
| Wage permitted | 82 |

Who can set him free?

| | |
|--|----|
| The Governor and Board of Pardons may pardon him | 99 |
|--|----|

What specific disabilities are caused by a prison sentence?

| | |
|--------------------------------|-----|
| Citizenship lost | 102 |
| Citizenship regained | 102 |
| Marital rights lost | 106 |
| A criminal record | 109 |

MAINE.

Why is he confined?

| | |
|---|----|
| Serving a fixed sentence. | 13 |
| Prohibition of capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 18 |
| Corporal punishment prohibited. | 21 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution permitted. | 26 |
| Public works. | 31 |
| Branding of convict-made goods | 42 |
| Manufacture of certain articles prohibited | 44 |
| Hours of labor | 46 |

How is he maintained?

| | |
|------------------|----|
| Bunking. | 49 |
| Food | 54 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct. | 70 |
| Wage permitted | 82 |
| Prison schools | 90 |
| Prison libraries. | 90 |

Who can set him free?

| | |
|---|-----|
| The Governor and Council may pardon him | 100 |
|---|-----|

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost. | 102 |
| Marital rights lost. | 106 |
| A criminal record. | 109 |
| Use of dead body for scientific purposes | 113 |

MARYLAND.

What is the status of the Prisoner?

| | |
|---------------------------------|---|
| The ward of the state | 4 |
|---------------------------------|---|

Why is he confined?

| | |
|---------------------------------------|----|
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 18 |
| Corporal Punishment permitted | 22 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution permitted | 26 |
| Public works | 31 |
| Manufacture of certain articles prohibited | 44 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 49 |
| Food | 54 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct. | 70 |
| Time for good conduct forfeited | 70 |
| Special favors for good conduct permitted | 77 |
| Wage permitted | 82 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Governor may pardon him | 98 |
|---------------------------------------|----|

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 102 |
| A criminal record | 109 |
| Use of dead body for scientific purposes | 114 |

MASSACHUSETTS.

Why is he confined?

| | |
|--|----|
| Serving an indeterminate sentence. | 14 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 18 |
| Shackles and chains permitted | 20 |
| Gag, iron mask, etc., prohibited | 21 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution permitted | 26 |
| State industries; state consumption. | 28 |

| | |
|--|----|
| Public works | 32 |
| Limitation of number of convicts in one industry | 40 |
| Manufacture of certain articles prohibited | 44 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 49 |
| Food | 54 |
| Clothing | 58 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct | 70 |
| Time for good conduct forfeited | 70 |
| Grading of prisoners | 79 |
| Wage permitted | 82 |
| Prison schools | 90 |

Who can set him free?

| | |
|---|-----|
| The Parole Board | 94 |
| The Governor and Council may pardon him | 100 |

What specific disabilities are caused by a prison sentence?

| | |
|-------------------------------|-----|
| Citizenship lost | 102 |
| Marital rights lost | 107 |
| A criminal record | 109 |

MICHIGAN.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|---|----|
| Serving an indeterminate sentence | 14 |
| Prohibition of capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 19 |
| Corporal punishment permitted | 22 |
| Corporal punishment prohibited | 21 |
| Showering with cold water prohibited | 23 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution prohibited | 26 |
| Public works | 32 |
| State farms; community consumption | 38 |
| State factories; community consumption | 38 |
| Manufacture of goods manufactured by free industries in the state prohibited | 41 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 49 |
| Food | 54 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 64 |
| Reduction of time for good conduct | 70 |
| Time for good conduct forfeited | 70 |
| Grading of prisoner permitted | 79 |
| Grade forfeited | 79 |
| Wage for overtime permitted | 87 |
| Assistance to prisoner's family | 88 |
| Prison schools | 90 |
| Prison libraries | 90 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Parole Board | 94 |
| The Governor may pardon him | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship not forfeited | 100 |
| Marital rights lost | 107 |
| A criminal record | 109 |
| Use of dead body for scientific purposes | 114 |

MINNESOTA.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|---|----|
| Working off a fine and costs | 9 |
| Serving an indeterminate sentence | 13 |
| Prohibition of capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
|--|----|

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution permitted | 26 |
| Leasing to individuals for work inside institution prohibited | 26 |
| Public works | 32 |
| State factories; community consumption | 38 |
| Limitations of number of convicts in one industry | 40 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 49 |
| Food | 54 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching | 65 |
| Reduction of time for good conduct | 70 |

| | |
|---------------------------------------|----|
| Time for good conduct forfeited . . . | 70 |
| Assistance to prisoner's family . . . | 88 |
| Industrial training | 91 |

Who can set him free?

| | |
|---|----|
| The Parole Board | 94 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|-------------------------------|-----|
| Citizenship lost | 102 |
| Marital rights lost | 107 |

MISSISSIPPI.

What is the status of the prisoner?

| | |
|------------------------------------|---|
| The property of the state. | 4 |
|------------------------------------|---|

Why is he confined?

| | |
|--------------------------------------|----|
| Working off a fine and costs | 12 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|---|----|
| Cruel and unusual punishments pro- hibited | 17 |
| Corporal punishment permitted . . . | 22 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work in- side institution prohibited | 26 |
| Public works. | 32 |
| Public works prohibited | 29 |
| State farms: community consump- tion. | 38 |
| Hours of labor | 46 |

How is he maintained?

| | |
|-------------------|----|
| Bunking. | 49 |
| Food | 55 |
| Clothing. | 57 |

How is he cared for?

| | |
|--|----|
| Provision for health and medical inspection | 61 |
| Provision for religious teaching . . . | 65 |
| Reduction of time for good conduct. . | 71 |
| Grading of prisoner. | 79 |
| Wage permitted | 82 |

Who can set him free?

| | |
|--|-----|
| The Governor and Senate may par- don him. | 100 |
|--|-----|

What specific disabilities are caused by a prison sentence?

| | |
|------------------------------|-----|
| Citizenship lost. | 103 |
| Marital rights lost. | 107 |
| A criminal record. | 109 |

MISSOURI.

What is the status of the prisoner?

| | |
|------------------------------------|---|
| The property of the state. | 4 |
|------------------------------------|---|

Why is he confined?

| | |
|--------------------------------------|----|
| Working off a fine and costs | 10 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|---|----|
| Cruel and unusual punishments pro- hibited | 17 |
|---|----|

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work in- side institution prohibited | 26 |
| State industries; state consumption. . | 28 |
| Public works. | 33 |
| State factories; community con- sumption | 38 |
| Hours of labor | 45 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 49 |
| Food | 55 |
| Clothing | 57 |

How is he cared for?

| | |
|--|--------|
| Provision for health and medical in- spection | 61 |
| Provision for religious teaching . . . | 65 |
| Reduction of time for good conduct. . | 71 |
| Wage permitted | 83 |
| Wage for overtime permitted | 87 |
| Assistance to prisoner's family . . . | 88, 89 |

Who can set him free?

| | |
|-------------------------------------|----|
| The Governor may parole him | 92 |
| The Governor may pardon him | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|---|-----|
| Citizenship lost | 103 |
| Citizenship regained | 103 |
| Marital rights lost | 107 |
| A criminal record | 110 |
| Use of dead body for scientific pur- poses | 114 |

MONTANA.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|--|----|
| Working off a fine and costs | 6 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|---|----|
| Cruel and unusual punishments pro- hibited | 17 |
| Reduction of food prohibited | 21 |
| Corporal punishment prohibited . . . | 21 |
| Showering with cold water pro- hibited | 23 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited . . . | 26 |
| Public works | 33 |
| State factories; community consumption | 39 |
| Hours of labor | 46 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 50 |
| Food | 55 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Reduction of time for good conduct . | 71 |
| Time for good conduct forfeited . | 71 |

Who can set him free?

| | |
|--|----|
| The Parole Board | 94 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|--------------------------------|-----|
| Citizenship lost | 103 |
| Citizenship regained | 105 |
| Marital rights lost | 107 |
| A criminal record | 110 |

NEBRASKA.

What is the status of the prisoner?

| | |
|-----------------------------------|---|
| The property of the state | 4 |
|-----------------------------------|---|

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 5 |
| Serving an indeterminate sentence. | 13 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
|--|----|

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution permitted | 26 |
| Public works | 33 |
| Hours of labor | 46 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 50 |
| Food | 55 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Reduction of time for good conduct. | 71 |
| Time for good conduct forfeited . . | 71 |

Who can set him free?

| | |
|--|----|
| The Parole Board | 95 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 103 |
| Citizenship regained | 103 |
| Marital rights lost | 107 |
| A criminal record | 110 |
| Use of dead body for scientific purposes | 114 |

NEVADA.

What is the status of the prisoner?

| | |
|------------------------------------|---|
| The property of the state. | 4 |
|------------------------------------|---|

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 7 |
| Serving a fixed sentence. | 13 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Reduction of food prohibited . . . | 21 |
| Corporal punishment prohibited. . | 21 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution permitted. . . . | 27 |
| Public works. | 33 |
| Hours of labor | 46 |

How is he maintained?

| | |
|---|----|
| Clothing | 57 |
| Provision for religious teaching . . | 65 |
| Reduction of time for good conduct. | 71 |
| Special favor for good conduct forfeited. | 77 |
| Grading of prisoner | 79 |
| Wage permitted | 83 |
| Wage forfeited. | 83 |

Who can set him free?

| | |
|--|----|
| The Governor and Board of Pardons may pardon him | 99 |
|--|----|

What specific disabilities are caused by a prison sentence?

| | |
|-------------------------------|-----|
| Citizenship lost. | 103 |
| Citizenship regained. | 103 |
| Marital rights lost. | 107 |
| A criminal record. | 110 |

NEW HAMPSHIRE.

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 12 |
| Serving an indeterminate sentence. | 14 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|------------------------------------|----|
| Solitary confinement permitted . . | 19 |
|------------------------------------|----|

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution permitted | 27 |
| Labor which can be carried on without expense to county and is consistent with safe-keeping of prisoners permitted | 44 |
| Hours of labor | 46 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 50 |
| Food | 55 |
| Clothing | 58 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Provision for religious teaching . . | 65 |
| Reduction of time for good conduct. | 72 |
| Special favor for good conduct . . | 77 |
| Wage permitted | 83 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board | 95 |
| The Governor may pardon him . . | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship not forfeited | 105 |
| Marital rights lost | 107 |
| A criminal record | 110 |
| Use of dead body for scientific purposes | 114 |

NEW MEXICO.

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 7 |
| Serving an indeterminate sentence. | 14 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Dungeons permitted. | 19 |
| Corporal punishment prohibited. . | 22 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited | 26 |
| Public works. | 34 |
| State factories: community consumption | 39 |
| Hours of labor | 46 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 50 |
| Food | 55 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Provision for religious teaching . . | 65 |
| Reduction of time for good conduct. | 72 |
| Time for good conduct forfeited. . | 72 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board | 95 |
| The Governor may pardon him . . | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|-------------------------------|-----|
| Citizenship lost | 103 |
| Citizenship regained. | 103 |

NEW JERSEY.

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 12 |
| Serving an indeterminate sentence. | 14 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Dungeons permitted. | 19 |
| Shackles and chains permitted . . | 20 |
| Shackles and chains prohibited . . | 20 |
| Corporal punishment prohibited. . | 22 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited | 26 |
| State industries: state consumption. | 28 |
| State farms: state consumption . . | 29 |
| Public works. | 33 |
| Branding of convict-made goods. . | 42 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking. | 50 |
| Food | 55 |
| Clothing. | 57 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Provision for religious training . . | 65 |
| Reduction of time for good conduct. | 72 |
| Time for good conduct forfeited. . | 72 |
| Assistance to prisoner's family. . . | 89 |
| Prison schools | 90 |

Who can set him free?

| | |
|--|----|
| The Parole Board | 95 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|---|-----|
| Citizenship lost. | 103 |
| Citizenship regained. | 103 |
| Power of procreation lost. | 105 |
| Marital rights lost. | 107 |
| A criminal record. | 110 |
| Use of dead body for scientific purposes. | 114 |

NEW YORK.

Why is he confined?

- Serving an indeterminate sentence . 14
Awaiting capital punishment . 16

How may he be punished?

- Cruel and unusual punishments prohibited . 17
Dungeons permitted . 19
Corporal punishment prohibited . 22
Showering with cold water prohibited . 23
Crucifix, yoke and buck prohibited . 23

How may he be worked?

- Leasing to individuals for work inside institution prohibited . 26
State industries; state consumption . 29
Public works . 34
Branding of convict-made goods . 42
Manufacture of certain articles prohibited . 44
Hours of labor . 45

How is he maintained?

- Bunking . 50
Food . 55

How is he cared for?

- Provision for health and medical inspection . 62
Provision for religious teaching . 65
Reduction of time for good conduct . 73
Grading of prisoners . 79
Wage permitted . 83
Wage forfeited . 83
Prison schools . 90

Who can set him free?

- The Parole Board . 95
The Governor may pardon him . 98

What specific disabilities are caused by a prison sentence?

- Citizenship lost . 103
Power of procreation lost . 106
Marital rights lost . 107
A criminal record . 110

NORTH CAROLINA.

What is the status of the prisoner?

- The property of the state . 4

Why is he confined?

- Working off a fine and costs . 12
Serving a fixed sentence . 13
Awaiting capital punishment . 16

How may he be punished?

- Cruel and unusual punishment prohibited . 17

How may he be worked?

- Leasing to individuals for work outside institution permitted . 25
Leasing to individuals for work inside institution permitted . 27
Public works . 35
State farms; community consumption . 38
Hours of labor . 46

How is he maintained?

- Bunking . 50
Food . 55
Clothing . 57, 58

How is he cared for?

- Provision for health and medical inspection . 62
Provision for religious teaching . 65
Reduction of time for good conduct . 73
Time for good conduct forfeited . 73
Wage permitted . 84

Who can set him free?

- The Governor may pardon him . 98

What specific disabilities are caused by a prison sentence?

- Citizenship lost . 103
Citizenship regained . 103
Use of dead body for scientific purposes . 114

NORTH DAKOTA.

What is the status of the prisoner?

- The property of the state . 4

Why is he confined?

- Working off a fine and costs . 8
Serving an indeterminate sentence . 14
Awaiting capital punishment . 16

How may he be punished?

- Cruel and unusual punishments prohibited . 17

How may he be worked?

- Leasing to individuals for work inside institution prohibited . 26
State industries; state consumption . 29
Public works permitted . 35
State farms; community consumption . 38
State factories, community consumption . 39
Hours of labor . 45

How is he maintained?

- Bunking . 50
Food . 55
Clothing . 58

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Provision for religious teaching | 65 |
| Reduction of time for good conduct | 73 |
| Time for good conduct forfeited | 73 |
| Wage permitted | 84 |

Who can set him free?

| | |
|--|----|
| The Parole Board | 96 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 104 |
| Citizenship regained | 104 |
| Marital rights lost | 107 |
| A criminal record | 110 |
| Use of dead body for scientific purposes | 114 |

OHIO.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|---|----|
| Working off a fine and costs | 7 |
| Serving an indeterminate sentence | 15 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
|--|----|

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited | 26 |
| State industries: state consumption | 29 |
| State farms: state consumption | 29 |
| Public works | 35 |
| Limitation of number of convicts in one industry | 40 |
| Branding of convict-made goods | 42 |
| Hours of labor | 46 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 51 |
| Food | 56 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 62 |
| Provision for religious teaching | 65 |
| Reduction of time for good conduct | 74 |
| Time for good conduct forfeited | 74 |
| Special favors for good conduct permitted | 77 |
| Grading of prisoner | 79 |
| Wage permitted | 84 |
| Wage forfeited | 84 |
| Industrial training | 91 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Parole Board | 96 |
| The Governor may pardon him | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 104 |
| Citizenship regained | 104 |
| Marital rights lost | 107 |
| A criminal record | 111 |
| Use of dead body for scientific purposes | 115 |

OKLAHOMA.

Why is he confined?

| | |
|--|----|
| Working off a fine and costs | 8 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 19 |
| Shackles and chains permitted | 20 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited | 26 |
| Public works | 35 |
| Branding of convict-made goods | 43 |
| Hours of labor | 46 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 51 |
| Food | 55 |
| Clothing | 58 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 63 |
| Provision for religious teaching | 65 |

Who can set him free?

| | |
|--|----|
| The Governor may parole him | 92 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|-------------------------------|-----|
| Citizenship lost | 104 |
| Marital rights lost | 107 |
| A criminal record | 111 |

OREGON.

What is the status of the prisoner?

| | |
|-------------------------------------|---|
| The property of the state | 4 |
|-------------------------------------|---|

Why is he confined?

| | |
|--|------|
| Working off a fine and costs | 7, 8 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Dungeons permitted | 19 |

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution permitted | 27 |
| Leasing to individuals for work inside institution prohibited | 27 |
| Public works | 35 |
| State farms; community consumption | 38 |
| Branding of convict-made goods | 43 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 51 |
| Food | 56 |

How is he cared for?

| | |
|--|----|
| Provision for health and medical inspection | 63 |
| Reduction of time for good conduct permitted | 74 |
| Time for good conduct forfeited | 74 |
| Wage permitted | 85 |
| Wage forfeited | 85 |

Who can set him free?

| | |
|---------------------------------------|----|
| The Governor may pardon him | 98 |
|---------------------------------------|----|

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 104 |
| Citizenship regained | 104 |
| Marital rights lost | 107 |
| A criminal record | 111 |
| Use of dead body for scientific purposes | 115 |

PENNSYLVANIA.

Why is he confined?

| | |
|---|----|
| Serving an indeterminate sentence | 15 |
| Awaiting capital punishment | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Solitary confinement permitted | 19 |
| Shackles and chains permitted | 20 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for works inside institution prohibited | 27 |
| State industries; state consumption | 29 |
| Public works | 35 |
| State farms; community consumption | 38 |
| Limitation of number of convicts in one industry | 40 |
| Use of machinery prohibited | 41 |
| Branding of convict-made goods | 43 |
| Hours of labor | 45 |

How is he maintained?

| | |
|-------------------|----|
| Bunking | 51 |
| Food | 56 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 63 |
| Provision for religious teaching | 65 |
| Reduction of time for good conduct | 74 |
| Time for good conduct forfeited | 74 |
| Special favors for good conduct permitted | 77 |
| Wage permitted | 85 |

Who can set him free?

| | |
|--|----|
| The Parole Board | 96 |
| The Governor and Board of Pardons may pardon him | 99 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship not forfeited | 105 |
| Marital rights lost | 107 |
| A criminal record | 111 |
| Use of dead body for scientific purposes | 115 |

RHODE ISLAND.

What is the status of the prisoner?

| | |
|---------------------------------|---|
| The ward of the state | 3 |
|---------------------------------|---|

Why is he confined?

| | |
|---|----|
| Working off a fine and costs | 10 |
| Serving a fixed sentence | 13 |
| Prohibition of capital punishment | 15 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 17 |
| Corporal punishment permitted | 22 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work inside institution permitted | 27 |
| Hours of labor | 46 |

How is he maintained?

| | |
|--------------------|--------|
| Bunking | 51 |
| Food | 56 |
| Clothing | 57, 58 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 63 |
| Provision for religious teaching | 65 |
| Reduction of time for good conduct | 75 |
| Time for good conduct forfeited | 75 |
| Wage permitted | 85 |

Who can set him free?

| | |
|--|-----|
| The Legislature may pardon him | 100 |
|--|-----|

What specific disabilities are caused by a prison sentence?

| | |
|--------------------------------|-----|
| Citizenship lost | 104 |
| Citizenship regained | 104 |
| Marital rights lost | 107 |
| A criminal record | 111 |

SOUTH CAROLINA.

Why is he confined?

- Serving a fixed sentence. 13
 Awaiting capital punishment 16

How may he be punished?

- Cruel and unusual punishments prohibited 17
 Solitary confinement permitted . . . 19
 Blood hounds permitted 19
 Shackles and chains permitted . . . 20

How may he be worked?

- Leasing to individuals for work outside institution permitted. 25
 Public works. 35

How is he maintained?

- Bunking. 51
 Food 65

How is he cared for?

- Provision for health and medical inspection 63
 Provision for religious teaching . . . 65

Who can set him free?

- The Governor and Board of Pardons may pardon him 99

What specific disabilities are caused by a prison sentence?

- Citizenship lost 104
 Citizenship regained. 104
 Use of dead body for scientific purposes 115

SOUTH DAKOTA.

Why is he confined?

- Working off a fine and costs 8
 Serving an indeterminate sentence. 15
 Awaiting capital punishment 16

How may he be punished?

- Cruel and unusual punishment prohibited 17
 Dungeons permitted 19
 Shackles and chains permitted . . . 20

How may he be worked?

- Leasing to individuals for work inside institution permitted 27
 Public works 35
 State farms; community consumption 38
 Work injurious to health prohibited. 44
 Hours of labor 45

How is he maintained?

- Bunking 52
 Food 56
 Clothing 58

How is he cared for?

- Provision for health and medical inspection 63
 Reduction of time for good conduct. 75
 Time for good conduct forfeited . . . 75
 Special favor for good conduct permitted 77
 Wage permitted 85

Who can set him free?

- The Parole Board 96
 The Governor and Board of Pardons may pardon him 99

What specific disabilities are caused by a prison sentence?

- Citizenship lost 104
 Citizenship regained 104
 Marital rights lost 107
 Use of dead body for scientific purposes 115

TENNESSEE.

What is the status of the prisoner?

- The property of the state 4

Why is he confined?

- Working off a fine and costs 11
 Serving a fixed sentence 13
 Awaiting capital punishment 16

How may he be punished?

- Cruel and unusual punishment prohibited 17
 Punishment exceeding hard labor prohibited 18
 Solitary confinement permitted . . . 19
 Reduction of food permitted 21

How may he be worked?

- Leasing to individuals for work outside institution permitted 25
 Leasing to individuals for work outside institution prohibited 24
 Leasing to individuals for work inside institution permitted 27
 Public works 36
 State farms; community consumption 38
 State factories; community consumption 39
 Competition with free labor prohibited. 39
 Hours of labor 45

How is he maintained?

- Bunking 52
 Food 56
 Clothing 57, 58

How is he cared for?

- Provision for health and medical inspection 63

| | |
|--|----|
| Provision for religious teaching . . | 65 |
| Reduction of time for good conduct . | 75 |
| Time for good conduct forfeited . . | 75 |
| Special favor for good conduct permitted | 77 |
| Prison schools | 90 |

Who can set him free?

| | |
|---------------------------------|----|
| The Governor may pardon him . . | 98 |
|---------------------------------|----|

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 104 |
| Citizenship regained | 104 |
| Marital rights lost | 107 |
| A criminal record | 111 |
| Use of dead body for scientific purposes | 115 |

TEXAS.

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 6 |
| Serving a fixed sentence | 13 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 18 |
| Corporal punishment permitted . . | 22 |

How may he be worked?

| | |
|--|----|
| Public works | 36 |
| State farms; community consumption | 38 |

How is he maintained?

| | |
|--------------------|----|
| Bunking | 52 |
| Food | 56 |
| Clothing | 57 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 63 |
| Provision for religious teaching . . | 65 |
| Grading of prisoners | 80 |
| Prison schools | 90 |
| Prison libraries | 90 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board | 97 |
| The Governor may pardon him . . | 98 |

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 104 |
| Citizenship regained | 104 |
| Marital rights lost | 107 |
| Use of dead body for scientific purposes | 116 |

UTAH.

What is the status of the prisoner?

| | |
|------------------------------------|---|
| The property of the state. | 4 |
|------------------------------------|---|

Why is he confined?

| | |
|------------------------------------|----|
| Working off a fine and costs . . . | 7 |
| Serving a fixed sentence. | 13 |
| Awaiting capital punishment . . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited | 18 |
| Solitary confinement permitted. . . | 19 |
| Corporal punishment permitted . . | 23 |
| Corporal punishment prohibited. . | 22 |
| Showering with cold water prohibited | 23 |

How may he be worked?

| | |
|--|----|
| Leasing to individuals for work outside institution prohibited . . . | 24 |
| Leasing to individuals for work inside institution prohibited . . . | 27 |
| State industries: state consumption. | 29 |
| Public works permitted | 36 |
| State farms: community consumption. | 38 |
| Competition with free labor prohibited | 39 |
| Manufacture of goods manufactured by free industries in the state prohibited | 41 |
| Hours of labor | 45 |

How is he maintained?

| | |
|------------------|----|
| Bunking. | 52 |
| Food | 56 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection | 63 |
| Provision for religious teaching . . | 66 |
| Reduction of time for good conduct. | 75 |
| Time for good conduct forfeited. . | 75 |
| Grading of prisoners. | 80 |
| Wage permitted | 86 |
| Prison schools | 90 |
| Prison libraries. | 90 |

Who can set him free?

| | |
|--|-----|
| The Governor and Board of Pardons may pardon him | 100 |
|--|-----|

What specific disabilities are caused by a prison sentence?

| | |
|--|-----|
| Citizenship lost | 104 |
| Marital rights lost. | 108 |
| A criminal record. | 111 |
| Use of dead body for scientific purposes | 116 |

VERMONT.

What is the status of the prisoner?

The ward of the state 4

Why is he confined?

Working off a fine and costs 8

Serving a fixed sentence 13

Awaiting capital punishment 16

*How may he be worked?*Leasing to individuals for work in-
side institution permitted 27

Public works 37

Hours of labor 46

How is he maintained?

Bunking 52

Food 56

How is he cared for?

Provision for religious teaching . . . 66

Reduction of time for good conduct. 76

Time for good conduct forfeited . . . 76

Wage permitted 86

Wage forfeited 86

Prison schools 90

Prison libraries 90

Who can set him free?

The Governor may pardon him . . . 98

*What specific disabilities are caused
by a prison sentence?*

Citizenship not forfeited 105

Marital rights lost 108

Use of dead body for scientific pur-
poses 116

VIRGINIA.

Why is he confined?

Working off a fine and costs 11

Serving a fixed sentence 13

Awaiting capital punishment 16

*How may he be punished?*Cruel and unusual punishments pro-
hibited 18

Dungeons permitted 19

Bloodhounds permitted 19

Reduction of food permitted 21

Gag, iron mask, etc., permitted . . . 21

*How may he be worked?*Leasing to individuals for work in-
side institution permitted 27

State industries; state consumption. 29

Public works 36

State farms; community consump-
tion 38State factories; community con-
sumption 39*How is he maintained?*

Bunking 52

Food 56

Clothing 57

*How is he cared for?*Provision for health and medical
inspection 63

Reduction of time for good conduct. 76

Wage for overtime work permitted. 88

Who can set him free?

The Governor may pardon him . . . 98

*What specific disabilities are caused
by a prison sentence?*

Citizenship lost 104

Marital rights lost 108

A criminal record 111

Use of dead body for scientific pur-
poses 116

WASHINGTON.

How is he confined?

Working off a fine and costs 6

Serving a fixed sentence 13

Awaiting capital punishment 16

*How may he be punished?*Cruel and unusual punishments pro-
hibited 18

Shackles and chains permitted . . . 20

*How may he be worked?*Leasing to individuals for work in-
side institution prohibited 27

Public works 37

State factories; community con-
sumption 39

Hours of labor 46

How is he maintained?

Bunking 52

Food 56

Clothing 57

*How is he cared for?*Provision for health and medical in-
spection 64

Provision for religious teaching . . . 66

Reduction of time for good conduct. 76

Time for good conduct forfeited . . . 76

Who can set him free?

The Governor may pardon him . . . 98

*What specific disabilities are caused
by a prison sentence?*

Citizenship lost 104

Power of procreation lost 106

Marital rights lost 108

A criminal record 111

Use of dead body for scientific pur-
poses 116

WEST VIRGINIA.

| | |
|------------------------------------|----|
| <i>Why is he confined?</i> | |
| Working off a fine and costs . . . | 10 |
| Serving a fixed sentence . . . | 13 |
| Awaiting capital punishment . . . | 16 |

| | |
|--|----|
| <i>How may he be punished?</i> | |
| Cruel and unusual punishments prohibited . . . | 18 |
| Shackles and chains permitted . . . | 20 |

| | |
|---|----|
| <i>How may he be worked?</i> | |
| Leasing to individuals for work inside institution permitted. . . | 28 |
| State industries: state consumption. . . | 29 |
| Hours of labor . . . | 45 |

| | |
|------------------------------|----|
| <i>How is he maintained?</i> | |
| Bunking. . . | 52 |
| Food . . . | 57 |

| | |
|---|----|
| <i>How is he cared for?</i> | |
| Provision for health and medical inspection . . . | 64 |

| | |
|---------------------------------|----|
| <i>Who can set him free?</i> | |
| The Governor may pardon him . . | 98 |

| | |
|--|-----|
| <i>What specific disabilities are caused by a prison sentence?</i> | |
| Citizenship lost. . . | 105 |
| Marital rights lost. . . | 108 |
| A criminal record. . . | 111 |
| Use of dead body for scientific purposes . . . | 117 |

WISCONSIN.

| | |
|--|---|
| <i>What is the status of the prisoner?</i> | |
| The property of the state . . . | 4 |

| | |
|---------------------------------------|----|
| <i>Why is he confined?</i> | |
| Working off a fine and costs . . . | 8 |
| Serving a fixed sentence . . . | 13 |
| Prohibition of capital punishment . . | 15 |

| | |
|---|----|
| <i>How may he be punished?</i> | |
| Cruel and unusual punishment prohibited . . . | 18 |
| Solitary confinement permitted . . | 19 |
| Corporal punishment prohibited . . | 22 |

| | |
|--|----|
| <i>How may he be worked?</i> | |
| Leasing to individuals for work inside institution permitted . . . | 28 |
| Public works prohibited . . . | 30 |
| State farms; community consumption . . . | 38 |
| State factories; community consumption . . . | 39 |
| Branding of convict-made goods . . | 43 |
| Hours of labor . . . | 45 |

How is he maintained?

| | |
|----------------|----|
| Bunking . . . | 53 |
| Food . . . | 57 |
| Clothing . . . | 58 |

How is he cared for?

| | |
|---|----|
| Provision for health and medical inspection . . . | 64 |
| Provision for religious teaching . . | 66 |
| Reduction of time for good conduct. . | 76 |
| Time for good conduct forfeited . . | 76 |
| Special favors for good conduct permitted . . . | 78 |
| Wage permitted . . . | 86 |
| Prison schools . . . | 90 |
| Prison libraries . . . | 91 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board . . . | 97 |
| The Governor may pardon him . . | 98 |

| | |
|--|-----|
| <i>What specific disabilities are caused by a prison sentence?</i> | |
| Citizenship lost . . . | 105 |
| Citizenship regained . . . | 105 |
| Marital rights lost . . . | 108 |
| A criminal record . . . | 111 |
| Use of dead body for scientific purposes . . . | 117 |

WYOMING.

Why is he confined?

| | |
|--------------------------------------|-------|
| Working off a fine and costs . . . | 9, 10 |
| Serving an indeterminate sentence. . | 15 |
| Awaiting capital punishment . . | 16 |

How may he be punished?

| | |
|--|----|
| Cruel and unusual punishments prohibited . . . | 18 |
|--|----|

How may he be worked?

| | |
|---|----|
| Leasing to individuals for work inside institution prohibited . . . | 27 |
| State industries; state consumption. . | 29 |
| Public works . . . | 37 |
| Provision for health and medical inspection . . . | 64 |
| Provision for religious teaching . . | 66 |
| Reduction of time for good conduct. . | 76 |
| Time for good conduct forfeited . . | 76 |
| Wage permitted . . . | 86 |
| Wage forfeited . . . | 86 |

Who can set him free?

| | |
|---------------------------------|----|
| The Parole Board . . . | 97 |
| The Governor may pardon him . . | 98 |

| | |
|--|-----|
| <i>What specific disabilities are caused by a prison sentence?</i> | |
| Citizenship lost . . . | 105 |
| Citizenship regained . . . | 105 |
| Marital rights lost . . . | 108 |
| A criminal record . . . | 111 |

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